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NOTES OF THE WEEK

Dangerous Offences

The effects of an offence may sometimes be far greater than the offender contemplated, and one of the problems that sometimes arise in the courts is how far to treat possible consequences, not realized by the offender as increasing the gravity of the offence. Of course if the offender is fully aware of the danger and takes the risk that is another matter.

The *Western Morning News* of August 28, records the case of a man who pleaded guilty to stealing gas by making a new joint after the Gas Board had cut off his supply and sealed the pipes. He was put on probation for three years. The chairman of the bench pointed out to the defendant that what he did might have cost the lives of his family and neighbours. In fact, said the prosecution, the defendant had made a good joint so that the danger did not result.

The *Evening Argus*, Brighton, of September 1, reported the prosecution of a woman who was charged with fraudulently abstracting electricity and admitted that she had reconnected the supply after it had been cut off, by using two pieces of wire to connect the supply cable to the fuse box so that electricity could be switched on without registering. An inspector said the way this had been done was highly dangerous. The woman was conditionally discharged and the chairman said she could very easily have electrocuted herself.

The *Daily Herald* of August 26, and other newspapers gave some prominence to the case of a miner who was sent to prison for three months for smoking in a pit. He was said to have been searched after a deputy had smelt cigarette smoke and to have admitted taking three cigarettes, a "stump" and one match down the colliery. There were 15 men working nearby and the mine manager, while admitting that the possibility of an explosion was remote, said that the no-smoking rule was firmly imposed.

Passing sentence the learned stipendiary magistrate said he did so in the interests of those who laboured in the pits and their families.

No Notice

If people generally observe standards of good manners and consideration for others it would not have been necessary to legislate against the litter nuisance, but undoubtedly it was necessary and we hope the Act is achieving some mitigation of the nuisance. It should be sufficiently well known by now that this kind of behaviour is not allowed, without the need of notices about it. Nevertheless, a youth who was spoken to about throwing bottles into a river and then throwing other bottles at them to try to break them was said to have replied when the danger of such conduct was pointed out to him, that he had not thought of it. He wrote to the court that there were no notices to say that litter was prohibited. This rather naïve excuse did not suffice to satisfy the authorities and he was convicted and fined.

There are so many prohibitions and notices to be observed in these days that it would seem that some people, we hope not many, are inclined to assume that unless there is a warning against it, it is safe to do pretty well anything that is not obviously a crime. Perhaps that accounts for the way some people trespass on what is obviously private property and if challenged reply that there is no notice about it. Notices ought not to be necessary, neither ought such notices as "spitting forbidden" or "commit no nuisance," but for what they are worth, they are often to be seen.

Police and Public

It cannot too often be emphasized that the basis on which the police work in this country is that they are doing a job in which they are entitled to expect, and to receive, the assistance of all law-abiding citizens. There is only one policeman to every 700 to 800 of the population and it is obvious, therefore, that without the goodwill and co-operation of the public the police cannot do their job properly.

Recent criticism of the conduct of the police in certain cases which have attracted attention has made many people wonder whether there has been any general deterioration in the good relations which should exist between

the police and the public whom they serve. *The Guardian* in its issues of September 2, 3 and 4, published articles dealing at some length with this important issue and giving a good deal of information about the policeman's difficulties and his point of view. The necessity for curbing indiscriminate parking and the uncertainties of the betting and licensing laws are given as two examples of aspects of the policeman's work which may lead to bad feelings between him and the public. The drunken or truculent prisoner who becomes violent and the way he has to be dealt with are also discussed, and there is mention of the reluctance of some members of the public to do their duty in coming to the aid of a policeman who is in difficulties in the performance of his duty. Inadequate penalties for assaults on the police in the execution of their duty are also referred to.

We think that these three articles are well worth reading as a contribution to this important subject. We cannot afford any falling-off in the standard of good relations between police and public; when their appears to be any danger of this happening the danger cannot be avoided by ignoring it or by pretending that it does not exist.

Why Work?

To this question the most obvious reply is "to earn my living," or "to keep my wife and family." Some would add that they liked work anyway, and would go on with it even if they had no need of the money, and most would agree that a balance between work and leisure made for a happy life. How much pleasure can be got out of a job must depend largely on its nature, but the fortunate ones are those who find something constantly to interest them in their daily occupation, whatever it may be.

The idea of allowing other people, through national assistance or other public funds, to keep them in idleness is repugnant to all self-respecting men who are capable of working, but there are a few men who, to their discredit, avoid work if they can manage to obtain what they think is sufficient from the public. The *Yorkshire Post* of September 2, reported the case of a man with a wife and 14 children who, it was stated, by a probation officer preferred to stay at home, although he had been offered many jobs, one of which would have paid £14 a week. The man, he said, did not think it worth while going to work, because as the father of 14 children he was receiving £15 18*s.* a week in national assistance, family allowance and board money from two of his children who were working.

The man, who was charged with stealing money from electric meters, was sentenced to six months' imprisonment. He had previously been put on probation for stealing. The assistance board had given him considerable help, finding him a bigger house and a cheap supply of furniture. His attitude was said to be that he would not work unless the job afforded him a lot of money.

The chairman described the man as a nuisance sponging on the community and stealing: no good to anyone. According to his wife, the man had not worked regularly for two years past.

When there are men out of work through no fault of their own, willing to work hard, it is difficult to find any kind of excuse for a man who calculates just how much he can get without working, chooses idleness and then steals.

Capital Murder

It would be idle to pretend that the Homicide Act really satisfies anyone. It was a compromise, and went as far as public opinion would allow. Advocates of the abolition of capital punishment may find some satisfaction in the fact that it reduces the number of murderers liable to the death penalty, and both they and those who favour the retention of the death penalty can admit that the Act made some improvements in the law relating to murder. Both sides must also agree that the Act has created some serious anomalies.

The Lord Chief Justice, addressing the annual meeting of the Canadian Bar Association, described the English system of capital punishment as "ridiculous." He went on to give instances. If a man killed and robbed, said Lord Parker, he would be hanged but if a man killed intending to rob that would not be so. If a man shot a woman he could be hanged, but not if he stabbed her. If he killed a policeman in any manner he could be hanged. Poisoning, a cold-blooded crime, was not punished by hanging.

These anomalies have often been the subject of comment on the part of ordinary people, who feel that of all forms of murder, poisoning is one of the most revolting. Many people also realize the truth of what Lord Parker said about robbery and attempted robbery, and some feel doubtful whether it was necessary to place the murder of a policeman, in whatever circumstances in the category of capital murders. These matters are highly controversial and probably agreement is impossible except upon the basis that the present state of the law remains unsatisfactory.

In a report of *The Times* of September 4, Lord Parker is stated to have told his audience that he was expressing only private views and not speaking for the judiciary and, after referring to the ridiculous state of the law on capital punishment to have added "Rather than permit this sort of confusion, I would rather see the death sentence abolished entirely."

Justices' Clerks' Assistants

We join in the congratulations offered to the National Association of Justices' Clerks' Assistants on the occasion of its 21st annual general meeting. Naturally, this is the subject of considerable attention in the July issue of the *Magisterial Officer*, which is the first quarterly number of volume 12 and a worthy example of this excellent organ of the Association.

A few assistants to clerks to justices had submitted evidence to the Departmental Committee of 1938, and a member of that committee suggested that assistants should form themselves into an association, pool their data and ideas, and place their combined proposals before the committee. Time pressed, and nine assistants, without any general mandate, formed the association and submitted the evidence within three weeks.

As was to be expected, the Association was active in its endeavours to improve the position of its members, both as to salaries and as to prospects. Much has been accomplished and, says the *Magisterial Officer*, it is now necessary for the Association, while maintaining its present position, to look to the future and widen its horizon. It must now turn its attention more directly to those functions which can generally be described as the maintenance and improvement of standards of conduct and competence among members and to the advancement and spreading of knowledge. These are worthy objects and we wish the Association success in their efforts. As their journal has shown from time to time, its members can make valuable contributions to discussion of the law and its administration

in the magistrates' courts. Many a justices' clerk has gained valuable experience as an assistant working in the office of a clerk with occasional opportunities of acting as clerk in court, before receiving his own appointment as a clerk to justices. It is not surprising that the Justices' Clerks' Society has shown an appreciative and helpful attitude towards the Association.

"Driving" a Motor Vehicle

The *Liverpool Daily Post* of September 3, 1959, has a report headed "now pushing auto-cycle is riding," which deals with a case in which a man who pushed an auto-cycle, with no intention of riding it, was convicted of riding the cycle without displaying "L" plates, he being a provisional licence holder. The report states that the clerk told the defendant that pushing a car had been deemed by the High Court to be driving it. We think it likely that the case which the learned clerk had in mind was *Shimmell* v. *Fisher and Others* (1951) 115 J.P. 526; [1951] 2 All E.R. 872. This was a case in which the phrase "take and drive away" within the meaning of s. 28 of the Road Traffic Act, 1930, was considered by the High Court. We had occasion to discuss the effect of this decision in an article at 120 J.P.N. 327, and we are still of opinion that it does not necessarily follow that because of their decision in that case the High Court would hold that pushing a motor vehicle as one pushes a barrow (as we said in the above article), is driving the vehicle for all purposes within the meaning of the Road Traffic Acts. It is perhaps a pity that this rather difficult point cannot be decided by the High Court so that all doubt on it may be resolved.

Disqualification of Absent Defendant

A report in the *Wells Journal* of August 28, 1959, refers to a case in which a man pleaded guilty to six motoring offences, was fined a total of £14 and was disqualified for driving for six months. It is stated in the report "the evidence was given at the court a fortnight ago when defendant did not appear. The case was then adjourned after the magistrates had considered the question of a period of disqualification. They were advised they could not impose such disqualification in the defendant's absence."

Any advice so given must have been based, we think, on the provisions of s. 1 (2) proviso (iii) of the Magistrates' Courts Act, 1957, by which a court proceeding to hear a case on a "plea of guilty by post" must not order the defendant to be subject to any disqualification without adjourning the hearing under s. 14 (3) of the Magistrates' Courts Act, 1952. By s. 1 (3) of the Act of 1957, the notice of adjournment sent in such a case must include notice of the reason for the adjournment, *i.e.*, that the court is considering whether he should be disqualified and wishes to give him an opportunity of attending before deciding that matter.

There is, however, no provision that a defendant cannot be disqualified in his absence and if on the adjourned hearing it is shown that the defendant has had adequate notice of the adjournment disqualification can be ordered even if he fails to attend. Moreover, if the case is dealt with in the defendant's absence (on due proof of the service of the summons) by the calling of evidence and not under the 1957 Act procedure, there is no legal requirement that there should be any adjournment. It is true, of course, that it is a very proper procedure for a court to give a defendant an opportunity of appearing in such circumstances so that he may urge anything which he wishes against his being disqualified.

Taking a Chance

There are so many rules and regulations which drivers of vehicles must obey that no one can be expected to be fully aware of all of them and courts may well take a lenient view in cases in which they are satisfied that although a not very serious offence has in fact been committed the defendant had overlooked, or was ignorant of, the requirement in question.

In our view the position is different when the law is deliberately flouted. There is great public concern about the number of accidents on the roads. One of the measures designed to reduce accidents as far as possible is the requirement that new drivers shall pass the prescribed test before they get full licences and that meantime they shall drive only so long as they observe the conditions attached to driving on a provisional licence. Motor cyclists are rather more liable to accidents than are many other road users, but the solo-motor cyclist cannot have a competent driver with him to supervise his driving unless that competent driver is carried on the pillion seat. It is, therefore, a very reasonable and proper requirement that a learner motor cyclist shall not carry any pillion passenger who is not a competent driver. The *Wells Journal* of August 28, reports a case of two young men who contravened this prohibition in order that the learner driver might "give his mate a lift home." When interviewed the passenger is alleged to have said "we both knew what we were doing and we done it." They were, perhaps, lucky to be fined only 30*s*. and 20*s*., respectively. A period of disqualification would possibly have served to emphasize, to the driver, that deliberately breaking the law is not looked on with favour by the courts.

Finance Act, 1959

We have sometimes been asked about the excise duty chargeable on a motor vehicle which was for the time being not in use, but was left standing on a public road. The primary questions put to us were about the chargeability of the duty, and we had to advise that the vehicle escaped if it was genuinely out of use for the time being. A secondary problem arose in relation to obstruction of the highway. A contributor at 121 J.P.N. 576, mentioned what is indeed well known, namely the practice of leaving a motor vehicle standing under sheeting throughout the winter months, when its owner does not wish to use it. This objectionable practice will from October 1, 1959, be less profitable to the owner of the vehicle because s. 10 of the Finance Act, 1959, declares that the excise duty under the Vehicles (Excise) Act, 1949, shall be chargeable in respect of the keeping of a vehicle on a public road while not used, as well as in respect of its being used upon the road.

Section 11 makes a substantial reduction in the excise duty payable on motor hackney carriages seating more than four passengers, *i.e.* motor omnibuses and motor coaches. The local authority with whom a vehicle is registered is, upon demand in proper form, to repay a proportionate part of any duty already paid for the current year.

Section 12 makes a small concession in regard to the excise duty payable on invalid carriages which are mechanically propelled, while s. 13 meets a point which has caused a good deal of trouble about agricultural tractors. The farmer normally uses these for carrying articles about the farm, and we have had to advise about the tax position where a tractor moved along a public road from one part of the farm to another. The new section is far from simple; it covers a page and a half of the Act, but it is to be hoped that in practice it will get rid of some difficulties.

Section 14 contains some other provisions which are of interest to local authorities, either as tax gatherers or as vehicle owners. It relieves them of duty under the Act of 1949, in respect of vehicles for dealing with frost, ice, or snow upon the roads. This will not make much financial difference but gets rid of a small grievance. Subsection (2) of the same section makes a minor concession in relation to trailers used by local authorities for spreading grit on roads.

AUTOMATISM AND DANGEROUS DRIVING

On June 10, 1959, a defendant appeared before the West London magistrates' court on summonses alleging that he drove a motor vehicle in a manner dangerous to the public and without due care and attention contrary to ss. 11 and 12 respectively of the Road Traffic Act, 1930. The prosecution and defence both agreed to summary trial of the s. 11 summons, and the defendant pleaded not guilty to both offences. The facts, which were not in dispute were that on December 5, 1958, the defendant was driving a van along Knightsbridge in an easterly direction. There was a line of parked vehicles on his nearside, and, as the van passed these vehicles, it struck one of them a glancing blow and then carried on. There was some evidence that at this stage the van was travelling at an excessive speed and that it overtook another motor vehicle travelling in the same direction. Shortly afterwards the van approached traffic lights, hit a vehicle at the lights in the rear pushing it forward out of control, knocked down a "keep left" sign and a lamp post and then went head on into a car travelling in the opposite direction on the other side of the road. The vehicle that had been pushed forward at the lights also struck this approaching car.

One of the witnesses who spoke to the defendant when he was still sitting in the van immediately after the accident said that the defendant did not appear to understand fully what was being said to him. The witness said that, apart from this, the defendant appeared to be normal, and other witnesses, including a police officer who arrived on the scene shortly after the accident, said that the defendant appeared to be normal, but the police officer added that he looked tired about the eyes and that his breath smelt of alcohol. It was not suggested that the defendant was under the influence of drink to such an extent as to be incapable of having proper control of the vehicle within the meaning of s. 15 of the Road Traffic Act, 1930.

When the police officer asked the defendant what had happened, the defendant said, "I don't know." Then he said, "I must have had a black out." When asked where the blackout had started, the defendant said he thought it was by the previous traffic lights. He also said that he had been driving at about 28 miles per hour.

The defendant, when he gave evidence, said that he had been driving regularly for 25 or 26 years. In 1937 he had had an accident while riding a motor cycle and had been taken to hospital. He had been unconscious for 10 days. He had had a slight fracture of the frontal bone, but this had not caused him any trouble since then. The defendant said that, on the day of the accident, he had had half a pint of beer. He could recollect passing the traffic lights at the junction with Exhibition Road, but he could not recollect anything after that until the accident happened. After the accident his mind was quite clear regarding his conversation with the policeman.

The defendant said that a short time after this incident he had had another blackout whilst driving a motor vehicle. There had been another accident, and he remembered no more until regaining consciousness in hospital. Since then he had been treated with pheno-barbitone for mild epilepsy. He undertook not to drive again until passed as fit, although he had had no more blackouts.

The only witness for the defence was a doctor who had examined the defendant on his admission to hospital after the second accident. The doctor had arranged for the defendant to have an electro-cerebral test, and this disclosed widespread slight injuries to the brain. The defendant had very small scars on the brain possibly due to the fracture in 1937. The doctor said that the blackout described by the defendant was typical of epilepsy, and, since people with scars such as the defendant's were liable to epilepsy, the blackouts described by the defendant were more likely to be due to epilepsy than to any other cause. The account of the accident given by the other witnesses was also consistent with an epileptic fit. The defendant's remarkable recovery after the accident with which the court was concerned was compatible with epilepsy. Although frothing at the mouth was common in major epilepsy there was frequently no signs of a minor attack afterwards. The defendant would not necessarily have had warning of the attack, and he ought not to drive a motor vehicle again until certified by a doctor as medically fit to do so. The doctor could give no reason why an attack should happen at any particular moment except that alcohol might provoke an attack. During an attack the defendant would have no control over his mind or limbs. His hands might well be lifeless. His hands might still be on the wheel and his foot pressing on the accelerator, but he would not be able to turn the wheel consciously.

Counsel for the defence referred to the judgment of Lord Goddard, C.J., in *Hill* v. *Baxter* (1958) 122 J.P. 134, in which he said at p. 135: "The first thing to be remembered is that the statute contains an absolute prohibition against driving dangerously . . . No question of *mens rea* enters into the offence; it is no answer to a charge under (that section) to say, 'I did not mean to drive dangerously . . .' The justices' finding, that the respondent was not capable of forming any intention as to the manner of driving, is really immaterial. What they evidently meant was that the respondent was in a state of automation. But he was driving and, as the Case finds, exercising some skill, and undoubtedly the onus of proving that he was in a state of automation must be on him. This is not only akin to a defence of insanity but it is a rule of the law of evidence that the onus of proving a fact which must be exclusively within the knowledge of a party lies on him who asserts it. This no doubt is subject to the qualification that where an onus is on the defendant in a criminal case the burden is not as high as it is on a prosecutor. The main contention before us on the part of the appellant was that there was no evidence on which the justices could find that the respondent was in a state of automatism or whatever term may be applied to someone performing acts in a state of unconsciousness. There was in fact no evidence except that of the respondent, and, while the justices were entitled to believe him, his evidence shows nothing except that after the accident he cannot remember what took place after he left Preston Circus. This is quite consistent with being overcome

with sleep or at least drowsiness. That drivers do fall asleep is a not uncommon cause of serious road accidents and it would be impossible as well as disastrous to hold that falling asleep at the wheel was any defence to a charge of dangerous driving. If a driver finds that he is getting sleepy he must stop. The justices no doubt were greatly influenced by the dictum—and it is only a dictum—of Humphreys, J., in *Kay* v. *Butterworth* (1945) 110 J.P. 75. In that case the learned Judge, after emphasizing that drowsiness or sleep would be no excuse said:

"'I do not mean to say that a person should be made liable at criminal law who, through no fault of his own, becomes unconscious while driving, as, for example, a person who has been struck by a stone or overcome by a sudden illness, or when the car has been put temporarily out of his control owing to his being attacked by a swarm of bees . . .' I agree that there may be cases where the circumstances are such that the accused could not really be said to be driving at all. Suppose he had a stroke or an epileptic fit, both instances of what may properly be called Acts of God; he might well be in the driver's seat even with his hands on the wheel but in such a state of unconsciousness that he could not be said to be driving. A blow from a stone or a swarm of bees I think introduces some conception akin to *novus actus interveniens*. In this case, however, I am content to say that the evidence falls far short of what would justify a court holding that this man was in an automatous state. There was no evidence that he was suffering from anything to account for what is so often called a 'black out' and which probably, if genuine, is epileptic in origin. Nor was there any evidence that he had ever had an attack of this description before. As I have said, his own evidence, and that is all there was, is consistent with having fallen asleep, or having his mind full of other matters and not paying proper attention. A defence of automatism is in effect saying that the accused did not know or appreciate the nature and quality of his actions, so it is getting very near a defence of insanity. It may be that in homicide cases attention may have to be given to the matter where diminished responsibility is set up. In the present case I am content to rest my judgment on the ground that there was no evidence which justified the justices finding that he was not fully responsible in law for his actions and that his intention was immaterial as there was here an absolute prohibition."

After referring to this judgment counsel for the defence submitted that, in the case before the Court, the evidence all pointed one way—that, at the material time, the defendant was suffering from an epileptic fit and that, although he was in the driving seat of the van, he could not be said to be "driving." He based this contention not only on the defendant's own evidence but also on the evidence of the doctor regarding the defendant's condition and on the fact that it would be difficult to imagine a driver of the defendant's experience driving in such an extraordinary manner if he were fully conscious.

He admitted that if the defendant knew that he was likely to have a fit he might still be guilty of the offences, but he pointed out that, as the defendant had had no attack before this one, he could not have anticipated it. (*See* the judgment of Pearson, J., in *Hill* v. *Baxter, supra,* in which he said at p. 139, ". . . In the case of a man who knows that he is liable to have an epileptic fit but nevertheless drives a vehicle on the road, there is a question of fact whether driving in these circumstances can properly be considered reckless or dangerous. The answer might depend to some extent on the degree and frequency of the epilepsy and the degree of probability that an epileptic fit might come on him.")

Counsel for the prosecution conceded that, if the defendant were suffering from an epileptic fit, he would not be guilty of the offences.

The learned magistrate, Mr. K. J. P. Barraclough, considered this was a border-line case. If the doctor had not said that it was possible to have a very short epileptic fit and then a quick recovery, he would not have accepted the defendant's account of what happened. As it was the magistrate was satisfied, in the light of all the evidence, that the defendant had discharged the onus of proving, according to the lower standard of proof referred to by Lord Goddard, *supra,* that at the material time he was not consciously driving the van, and, accordingly, he was entitled to be acquitted on both charges.

MORE WORDS

By EDWARD S. WALKER, A.C.S.S., D.P.A.(Lond.)

In an article upon the use of English, at 123 J.P.N. 361, the *Justice of the Peace and Local Government Review* proclaimed, in effect, editorial adherence at the same time to Dryden: that weighty sense should flow in fit words and heavenly eloquence (*Absalom and Achitophel,* part i, l. 868). and even the Book of Ecclesiastes, V, 2, which bids us "let thy words be few," which is excellent advice often unheeded. It was in a more jocular vein that a possible chaperone for those "daughters of earth" and "wretched un-idea'd girls" which are words, was suggested in the person of Sir John Wolfenden, on the ground that his name has become associated with legislation for controlling prostitutes.

More seriously, alas, Sir John Wolfenden (although he is a vice-chancellor of a university and one who has constructed a theory of poetry) is not immune against over-estimating syllogism in philological argument, notwithstanding that he himself is a neologist.

In an address entitled "Words and Things" given to the English Association, he was reported in *The Times* as contending that the most interesting category of words were those of "causation and explanation," and that here one came down to the question whether the causation class of words meant anything at all, or, as he put it, were we "hypostatizing" when we used them? Did we attach a vague and amorphous word to a vague and amorphous notion, and then go on to suppose that there must be something there because we had invented a label for it?

Sir John Wolfenden believed that we did precisely this—and he took as his example "juvenile delinquency." No one, he said, would deny that certain forms of behaviour in which young people indulged were anti-social, illegal, and aberrant. But, having recognized that, we then brought all those various ways of misbehaving under one umbrella and stuck on it the label "juvenile delinquency," assuming that everything under it was similar. It was not.

He argued that people had deceived themselves by talking about the "cause" of juvenile delinquency—thereby doing a double "hypostatization." There was, he said, not a single homogeneous phenomenon in juvenile delinquency, and the moment these so-called abstractions were allowed to creep in, and we recognized that there was a concrete object called "juvenile delinquency," we were deluding ourselves.

He concluded by saying that if we went on in this way we were not only wasting a great deal of time in trying to find the computative causes of something which we could see on examination did not exist, but we were getting into bad habits of thinking.

The rejoinder to this, it is suggested, is—to use a good, old fashioned Anglo-Saxon word—"balderdash."

Sir John Wolfenden in one breath neologizes with the use of the word "hypostasis" in the sense in which he uses it, and then decries the modern use of collective nouns. Surely, when a person talks of "juvenile delinquency," he means juvenile delinquency. He is deliberately and consciously using a collective noun to adumbrate the forms of behaviour which Sir John Wolfenden described above.

To take another example, if the phrase "units of accommodation" is used, one is not falling into "officialese" (if there be such a word) nor is one "hypostatizing." One is deliberately, in this instance, using a collective phraseology to describe succinctly the whole of the living accommodation provided by (say) a particular housing authority. One is consciously collecting together the semi-detached houses, the flats, the old persons' bungalows, the single persons' dwellings, and the miscellaneous properties, and alluding to them under one description. Here is no "hypostatization," but a cognizant use of the Queen's English.

But perhaps the last word on this subject may be given to Stella Benson, from her poem *Words* when she says:

> "Oh words, Oh words, and shall you rule
> The world? What is it but the tongue
> That doth proclaim a man a fool,
> So that his best songs go unsung,
> So that his dreams are sent to school
> And all die young."

THE HIGHWAYS ACT, 1959

(*Continued from p. 501, ante.*)

Section 23 of the Act collects and restates the troublesome law about repair of public bridges. *Prima facie* the liability to repair a public bridge rests at common law upon the inhabitants of the county. This must in early days have been impossible to enforce in practice, and no doubt the inhabitants of some smaller area would commonly agree to repair a bridge which was useful to them. Hence it became recognized that by immemorial custom the inhabitants of such an area might have become liable. It has in our experience only too frequently occurred, even in quite modern times, that doubt about the status of a bridge in some country place has led to its becoming out of repair. The Local Governement Act, 1929, did something towards bringing the law of bridges up to date by enacting that a bridge carrying a highway should for purposes of repair be treated as part of the highway, and the principle of this enactment is reproduced in the new section. Lord Reading's committee set out in their note on cl. 23 eight types of bridge, which are in future to be the liability of the county council, and four types which are not. Of these four, two are bridges for which the Minister of Transport and Civil Aviation has become responsible, and the other two are bridges which for one reason or another were maintainable by some other local authority under the present law.

The committee felt bound here to reproduce the existing law, but they pointed out its complication, and urged that some more ready means ought to be found for determining liability. The same was urged upon the Joint Select Committee by counsel who had drafted the Bill, who expressed the hope that collecting the different types of bridge in a consolidating enactment would move the parties concerned to devise some more practical solution than the present method of investigating the history of particular bridges. Meantime those who have to advise upon the law as it stands will find useful guidance in pp. 75–7 of the report of Lord Reading's committee.

Part III of the Act is headed "Creation of Highways," and brings together in logical order a number of powers of public authorities which are scattered in the pre-existing law. It starts in s. 26 with the power of the Minister to create new highways, and then proceeds to the creation of footpaths or bridleways, first by agreement in s. 27 and then in s. 28 by the use of compulsory powers. Sections 29 to 33 inclusive contain important detailed, albeit supplementary, provisions for these types of highway.

Section 34 deals with the important practical question of presuming the dedication of a highway by reason of its public use. There are many highways at the present day which, even if there is a question about the liability to keep them in repair, are undoubtedly available for general use, because a landowner or estate company has laid them out and thrown them open to the public, in such a way as to leave no doubt of the intention. Where dedication has to be presumed from actual use this is more likely to be along footpaths or other minor ways—not, that is to say, roads which are designed for the purpose of giving access to buildings. As we have so often had to point out in answering queries, the existence of a highway always depends on dedication. Where there is no overt and obvious act of dedication, express or otherwise, one has to look and see what has happened in practice. It has for centuries been recognized by the courts that general use of a strip of land as if it were a highway gives rise, after some interval of time, to a presumption that the owner who had the power to exclude the public at any time has dedicated the way impliedly. Section 1 of the Rights of Way Act, 1932, made this process rather easier, because it enacted in terms that enjoyment by the public as of right for a period of 20 years should give rise to a presumption of dedication as a highway, unless there was evidence that there was no intention on the part of the owner of the land to dedicate it. For many years before the passing of that Act it was usual for a landowner who was alert to the possibility that a public right of way might come into existence by implied dedication, to close the way in question for one day in the year. Railway companies, for example, made a habit of locking a gate across approach roads upon their property on Good Friday, a day when the road would in any event be not much used, and no doubt other landowners did this or something similar. When the Act of 1932 was passed s. 1 (3) provided that instead of creating a

physical obstacle in this way the landowner could put up a notice, saying that there was no right of way along the strip of land. (It is, in passing, interesting to note the analogy with the provisions of the Rights of Light Act, 1959. We do not recall that when the Bill for that Act was going through Parliament, after presentation of the report of Mr. Justice Harman's committee, there was any reference in Parliament to similarity of procedure between what was proposed by that committee and what had been enacted in 1932 for rights of way but the similarity is there.) Section 1 (3) enabled the landowner to put up a notice instead of a physical obstruction to the passage of the public. Subsection (4) of the same section was not in the Bill for that Act as first introduced, but was inserted in the House of Lords because it was thought that there might be cases where it would be difficult or undesirable to erect such a notice as subs. (3) allowed, and that there ought to be some other means whereby an owner could provide evidence negativing his intention to dedicate a highway over his land. This alternative means consisted in his being able to deposit with the local authority a map of his land, showing what highways he admitted to exist across it, and this was made tantamount to his denying that there were other ways than those shown upon the map. Upon the wording of the subsection, Lord Reading's committee took the view that it was only available if the landowner did admit the existence of at least one highway. They regarded this as anomalous, and accordingly inserted the words " if any " which now occur in para. (*d*) of subs. (6) in the present section. This is on the face of it an unimportant amendment, and indeed a desirable improvement of the existing law, but we call attention to it here because the Commons, Footpaths, and Open Spaces Preservation Society represented to Lord Reading's committee that the amendment ought not to be made. They apparently did not consider that the existing section was anomalous, and thought that the power of depositing a map instead of erecting a notice on the land should be reproduced without the words "if any." There was some discussion by members of the Joint Select Committee of both Houses when considering the Bill, about including the words " if any " in the section, and Lord Reading as the chairman of the former committee which prepared the Bill admitted that, in his view, the point was not of great importance—in the end, the Joint Select Committee decided in favour of the words. One reason why, perhaps, it is less important than it might otherwise seem is that, in order to preserve the effect of the owner's original declaration that there are no highways across his land, assuming that declaration to have been unchallenged and to have taken effect, he must, in order to retain its effectiveness, make a similar declaration in some form every six years. If he does not do this, the public may have begun to use some way across his land, and this may in course of a further 20 years be taken to have been turned into a highway by dedication. If this happened, his original deposit of a map or notice saying that there were no known highways across his land would be defeated after 26 years, *i.e.* the period of six years in which it was open to him to lodge a further declaration, and the period of 20 years prescription afterwards. This necessity for continuing to deposit a negative statement every six years could be burdensome, and would be likely enough to be forgotten in practice. It was stated before the Joint Select Committee that inquiries among local authorities had shown that while there were a large number of negative declarations lodged with them soon after the Act of 1932, these had become comparatively rare in intervening years. It may therefore be taken to be more usual for landowners to rely upon notices on the land, and only to resort to the plan of depositing a map with the local authority, and renewing it every six years, where there is some physical obstacle or other real objection to their putting a notice on the land. The central provision of s. 34 is that, when once a notice has been posted on the land, a notice to the local authority and the highway authority (where these are not the same) shall be evidence to negative dedication, unless the intention to dedicate is proved.

Section 35 provides explicitly for accepting local histories and maps and similar documents as evidence, and s. 37 contains an advance power for conversion of a private street into a highway, by virtue of a declaration in accordance with part IX of the Act which is concerned with the making up of private streets. It is on the face of it a little strange that this part of the Act says nothing about the case where a new highway other than a footpath or bridleway is created by a landowner, and made up by him to the standard which would have been required under the sections of the Act relating to private street works, when there is no order made under those enactments by the highway authority because the landowner voluntarily does everything necessary. For the law relating to such a case one has to look onward to s. 202 in part IX of the Act: *see* also ss. 39 and 40, in part IV, under the cross-heading " methods whereby highways may become maintainable at public expense."

Part IV of the Act is one of the most important in practice, because it affects the liabilities of local authorities between themselves, and the liabilities of public authorities to private persons. Its general heading is " Maintenance of Highways " and its provisions fall into two main groups—highways maintainable at public expense, and the maintenance of privately maintainable highways. In the first of these groups, s. 38 begins by abolishing the duty of the inhabitants at large. This is, today, an alteration of form rather than of substance, because the duty of the inhabitants at large was in practice carried out by a local authority, and was only enforceable by the obsolete procedure of indictment. Abolition of the duty involves abolition of the descriptive phrase which is almost second nature to the highway lawyer, but has become nearly incomprehensible to the present generation of other people. Section 38 then goes on to enumerate the highways which are already maintainable at public expense. This is a reenactment in convenient form of the existing law, with provisions that the class of highways maintainable at the public expense under this Act shall not include highways maintained by a county council, town council, or district council otherwise than in its capacity of highway authority. The local authority's liability in whatever way arising, with regard to these last mentioned highways, will remain, but will not be enforceable by the machinery of this part of the Act. There is also an interesting saving for certain limited types of highway dating from before 1835 and those affected by local Inclosure Acts. Section 38 (6) remedies a minor omission in s. 84 of the Public Health Act, 1925. That section required the councils of boroughs and urban districts within six months of the passing of the Act to prepare lists of streets which were highways maintainable by them, but did not say that the lists must be kept up to date. No doubt this would ordinarily be done as a matter of routine, but it is now a statutory duty.

The lists may be inspected without charge. Lord Reading's committee do not say in their report whether they considered extending this duty to highways in rural districts where the county council is the highway authority. In our experience it is more often in a rural district than in a borough or urban district that uncertainty arises about the responsibility for maintaining a highway, and *prima facie* a list maintained by

the county council and open to public inspection would be valuable.

In the same division of this part of the Act, s. 39 deals with the acceptance by a highway authority of newly dedicated highways. It is based upon s. 23 of the Highway Act, 1835. The procedure is modernized and there are some changes in the law. One very minor change is that private carriageways awarded under an Inclosure Act are brought within the section; it was doubtful whether they fell within s. 23 of the Act of 1835. A more important change is that the section will apply to footpaths, thus giving effect to the decision in *Richmond Corporation* v. *Robinson* (1955) 119 J.P. 168; [1955] 1 All E.R. 321, and getting rid of the fine distinctions which came to the front in that case, between footpaths which do and those which do not run beside a carriage-road. The remaining subsections of s. 39 provide in effect that a magistrates' court shall be able to decide a dispute between the dedicating owner and the highway authority, but if the council accept the highway the person by whom it was dedicated must keep it in repair for a period of 12 months; if he fails to do so it does not become maintainable at the public expense at the end of that time. Lord Reading's committee, while reproducing the substance of the previous law, appeared to recognize in this clause of the Bill that there is a gap at this point.

They took the view that, in practice, the dedicating owner will wish to have the highway maintained at the expiry of the 12 months at the public expense, and will therefore pay the price by keeping it in repair himself during that 12 months. Generally this will no doubt be true, but it does sometimes happen that an estate company, having developed land and laid out roads thereon, is wound up and goes out of business. The company's successors in title will ordinarily be the people who have purchased building plots, each of which extends to the middle line of the new road. These people may be unwilling to keep the new road in repair for 12 months, and there seems to be a danger that at the end of that time the highway will be dedicated as such but that neither the highway authority or anybody else will be under an obligation to maintain it.

Section 40 of the Act takes the place of several requirements of the existing law, some of which have been the subject of litigation. It deals with the acceptance by highway authorities, by agreement, of the liability to maintain highways previously maintained by somebody else. Almost incidentally, there is to be found in subs. 2 (*b*) a re-enactment of s. 146 and part of s. 147 of the Public Health Act, 1875, dealing with the acceptance by agreement of a public way which is to be constructed by a private person or by a highway authority on his behalf, with the intention of its being dedicated as a highway.

Sections 41 and 42 are of local rather than general interest. The former deals with the adoption of highways in the livestock rearing areas, and the extinguishment of the liability of private persons where improvements have been carried out with the approval of the Minister of Agriculture, Fisheries, and Food and the latter deals with the special position of bridges on the boundary of the county of London.

Section 43 is of general importance. Like s. 37 already mentioned, it contains a forward reference to part IX of the Act which is the part dealing with private street works, and provides for the adoption by a highway authority of a private street even though works under part IX of the Act have not been executed.

Having finished with the classification of highways maintainable at public expense, the Act comes in s. 44 to a fresh division of the same part, under the general heading "Maintenance of highways maintainable at public expense." Section 44 briefly states the duty of the highway authority to maintain such a highway, with a transitory provision for continuing the duty of the former highway authority where a highway is in process of becoming a trunk road. That duty is, however, not to continue after the date upon which the route of the trunk road is open to through traffic.

Section 45 deals with county roads which are claimed by the council of a non-county borough or urban district. This section perpetuates the illogical distinction, between boroughs and districts with a population exceeding 20,000 and those with a smaller population. It was presumably impossible upon consolidation to get rid of this distinction, but the section does contain some minor amendment of the previous law upon points which had caused doubt. In substance it repeats s. 32 of the Local Government Act, 1929, but is improved in form.

Section 46 preserves the right of a parish council to maintain footpaths and bridleways in the parish. This is possibly a slight amendment of s. 13 of the Local Government Act, 1894, because it was doubtful whether the parish council's power under that section extended to footpaths which are also bridleways. Since the parish council's power is limited by the ordinary restrictions on their expenditure, there is no danger of their spending too much under this section which, in any event, gives them power parallel to that of the highway authority, and does not diminish the duty of a private person (if such a person there be) who is liable to maintain the footpath or bridleway.

Section 47 is a curious little enactment which had previously occurred in s. 22 of the Housing Act, 1864. It provides that a person who is liable to maintain a highway shall have power to enter into an agreement with the highway authority, for the maintenance by him of any highway maintainable at public expense by them. Lord Reading's committee in their note upon the clause point out that, by reenacting it in simplified form, Parliament will have got rid of two illogical distinctions arising under the older section. Agreements under the older section could not be made with a highway authority other than a county council, and it was doubtful whether those agreements could extend to a bridge which formed part of a highway. It must be seldom that powers under this section have been exercised in the present century, or will be exercised in future. The section is, however, interesting as showing incidentally the sort of meaningless complication which has haunted the law of highways, by reason of its having grown up gradually and never having been reviewed as a whole since 1835.

Section 48 is a long and complicated section which we suspect is of greater historical than practical interest at the present day, although it was no doubt proper in a consolidation Bill to reenact the powers now collected in the section. We do not think it often happens that a highway authority take road materials from waste or common land, from the bed of a stream, or from enclosed land under the order of a magistrates' court. There is, however, much legislation (some of it going back a couple of centuries) and there are two decisions explaining that legislation. Section 49 contains supplemental provisions on the same subject.

Section 50 of the Act comes to something of more frequent occurrence, namely the power of a magistrates' court to remove a highway from the class of those maintainable at public expense, on the ground that it is no longer necessary. Subsection (2) excludes trunk roads and special roads, for the obvious reason that s. 7 of the Act reenacting provisions in

the Trunk Roads Acts, 1936–46, gives power to the Minister to remove these roads from their classification. The inclusion of footpaths and bridleways in the same excluding subsection is not explained by Lord Reading's committee, nor was it mentioned when the Joint Select Committee was examining the Bill. It is a reenactment of s. 47 (2) of the National Parks and Access to the Countryside Act, 1949. Where an order is made by a magistrates' court under the section, it is the liability to maintain the highway which is destroyed and not its status as a highway. The public are still entitled to use it, in right of its dedication, although nobody is bound to maintain it in a usable condition. This view is supported by s. 51 which enables a magistrates' court to direct that a highway shall again become maintainable at the public expense after ceasing to be so maintainable by virtue of an order under s. 50. Both these sections are derived from s. 24 of the Highways and Locomotives (Amendment) Act, 1878, the opportunity being taken to introduce a small improvement in that under the old section an order restoring a highway to the class of those maintainable at public expense could only be made by quarter sessions. This may have been because the restoring order was, in a sense, similar to an appeal against the previous order of the magistrates' court, but now each stage will be in the hands of the magistrates' court, and at each stage there will be a right of appeal to quarter sessions under s. 274 of the Act.

The next division in part IV of the Act is headed "Maintenance of privately maintainable highways," beginning with s. 52. Most of this is reenactment of existing law, though s. 52 itself contains a useful amendment of the older law by defining the length of highway which a person must maintain by reason of liability to maintain a bridge. The amendment restores a rule of law stated by Parliament in 1530, which had been held by the courts not to apply where the liability to repair the bridge arose under an Act of later date. Sections 53 to 58 inclusive deal with technicalities of repair *ratione tenurae* or *clausurae*, with the extinguishment of such liabilities.

With s. 59 we come to another division of part IV, headed "Enforcement of liability for maintenance," which is of more general importance, and embodies substantial amendments of the previous law. Section 59 begins with the provision we have already mentioned in general terms, abolishing indictment as a remedy for failure to maintain a highway. This can be regretted by the legal antiquarian, but indictment of the inhabitants at large had long seemed an anachronistic process, even though the inhabitants at large were in practice replaced by the highway authority. The machinery for requiring a highway authority, or a private person who has the obligation of maintaining a highway, to carry out the duty is to be in future a complaint to quarter sessions if the public body or other person sought to be charged with this duty asserts that it or he is not liable. If the body or person admits liability, and also admits that the work of maintenance has not been done, there will be procedure before a magistrates' court. It would, we suppose, be beyond the scope of the present Act to introduce the reform which we have already dicussed from time to time: namely the creation of full civil liability for failure to repair the highway, whether the person liable to repair it is a local authority, or a landowner, or another person. Quarter sessions will in future have a power, which generally speaking could hitherto be exercised only by the High Court, of determining all questions which may arise on the complaint. The remaining sections under the same heading are supplementary. This part of the Act ends with ss. 62 and 63 dealing with the expense of extraordinary traffic, and the cost of alternative routes where a highway is closed because of some types of public work.

Part V of the Act is concerned with improvement of highways. It begins with a "General power of improvement" which hitherto has had to be inferred from different statutes, some of which gave power to make specific improvements. Similar specific powers are reenacted in the remaining sections of this part of the Act. Amongst those sections it seems desirable to call particular attention to the powers of prescribing improvement lines in s. 72 and frontage lines for building in ss. 73 and 74.

These have the effect of making powers generally available to highway authorities, which previously were available where a statutory provision had been adopted or put in force by order. The opportunity has been taken to clear up some minor obscurities in the Public Health Act, 1925. The Public Health (Buildings in Streets) Act, 1888, is repealed by the Act, but reappears in s. 75. It was an obscure and in some ways an unhappy statute and the Departmental Committee on Building Byelaws recommended its repeal (Cd. 9213 of 1918, para. 68). It seems a pity that it could not be got rid of, but we suppose that its repeal without reenactment would have been too drastic for a consolidation Bill. We do not think that the remaining sections of part V call for detailed comment here; the side notes in the Act are largely self-explanatory and readers should examine them in order to see where a large number of existing powers are in future to be found.

Part VI of the Act deals with the important topic of the "Stopping up and Diversion of Highways." This is a controversial topic, upon which Lord Reading's committee took evidence from the Commons, Open Spaces, and Footpaths Preservation Society and the Parish Councils' Association as well as from other bodies. The society's publications have many times called attention to the various methods which have grown up for stopping or diverting highways, and it is regrettable that the present Act could not be used more fully than it has been, to reduce the complication. In particular it seems strange that the Minister of Transport and Civil Aviation under the Town and Country Planning Act, 1947, and the Minister of Housing and Local Government under the National Parks and Access to the Countryside Act, 1949, have parallel jurisdiction to close highways, and these are only two of the methods now existing. The committee considered, however, that it would be beyond the scope of the Bill for this Act to deal with the special cases arising outside what may be called the ordinary law of highways, and certainly the new law as embodied in this part of the Act is a great improvement on the old. Fundamentally, it goes back to ss. 84 to 93 of the Highway Act, 1835, which were considered in 1926 by a departmental committee, whose report discussed the defects of the law as then existing; it may be partly because of those defects that further complications have been introduced since 1926, for dealing with particular cases. After that committee had reported, a model clause was evolved for local legislation retaining the central principle of the Act of 1835, but getting rid (in areas where the necessary local legislation was promoted) of some of the expense and delay of procedure under the Act of 1835. What we have called the central principle of 1835 was that a highway should only be stopped or diverted after a hearing by a judicial body, in contrast to the modern methods which allow a Minister to do it. The Act of 1835, however, called first for a certificate from the local magistrates, followed by various public notices, and then for a hearing by quarter sessions with a jury. Readers who have appeared as

counsel in these cases at quarter sessions, or have been concerned in them as local government officials, will probably agree that the jury was not an ideal tribunal for determining the issue. The new Act preserves the judicial nature of the stopping or diverting process for ordinary use, but transfers the function to a magistrates' court. The magistrates, who under the Act of 1835 had to view the highway before granting the certificate which was the foundation of the whole procedure, are expressly empowered by s. 108 of the new Act to take a view if they think it necessary. There would in any event have been nothing to prevent their doing so, and the local Act precedent on which s. 108 is founded was silent about a view, but it was thought expedient to include express provision in the Bill for the purpose of removing doubts, particularly in regard to costs.

Section 108 excludes trunk roads and special roads from the jurisdiction of the magistrates. Circumstances can hardly be foreseen in which a trunk road or special road would become unnecessary, although it may happen that one stretch of such a road is reduced to the status of an ordinary highway, because the line of the trunk road or special road is altered. Such cases will necessarily be dealt with by the Minister of Transport and Civil Aviation. Where a stretch of road has in this way been reduced in status it will be open to the highway authority to consider whether it is still necessary, and if they decide that it serves no useful purpose they can go to the magistrates under s. 108. The exclusion, for good reason, of trunk roads and special roads from s. 108 leads to a curious provision in ss. 110 and 111, to which we shall refer below.

The general scheme of s. 108 is that an application will be made to the magistrates' court by the highway authority, or alternatively in certain cases by the council of a borough or urban district which is not the highway authority but obtains the latter's consent.

Where the highway is in a rural district there have to be special notices to the rural district council and to the parish council, or to the parish meeting if the parish has no parish council. The section read with sch. 12 contains elaborate provisions for giving notice to all other bodies and persons who may be affected, and they have a right to be heard by the magistrates' court. Further, an order for diverting a highway cannot be made without the written consent of the planning authority if they are not the applicants, and of every person having a legal interest in the land over which the highway is to be diverted. Neither the section nor the schedule limits the meaning of "a legal interest," and one can conceive an argument's arising about some interests, particularly those which under the Law of Property Act, 1925, take effect in equity. There is nothing to show that Lord Reading's committee foresaw this possibility. There is another feature of this section to be noted, in regard to the requirement of consent by a rural district council or parish council or parish meeting; by a planning authority in certain cases, and by persons having legal interests. The section says that a consent by the county council where they are the highway authority to an application by the council of a non-county borough or urban district shall not be unreasonably withheld, and any question whether its withholding is unreasonable shall be determined by the Minister of Town and Country Planning. It may be difficult for the Minister to determine this question without going into the merits of the proposed application and, if he decides that the county council are being unreasonable, this can hardly fail to have some weight with the magistrates' court. We suppose that, if the Minister so determines, the county council will be precluded from appearing before the magistrates as objecting to the application, but it will still, presumably, be the duty of the magistrates to consider all aspects of the matter. The other consents referred to in the section are not subject to any similar provision for deciding whether they have been unreasonably withheld. The effect is that in a rural district both the rural district council and the parish council or parish meeting, as the case may be, have a right of veto for stopping up or diversion of a highway, and that in case of a proposed diversion, in any class of district, the planning authority and every person having a legal interest in land over which the highway is proposed to be diverted will have a right of veto. As regards stopping up without diversion the consent of the planning authority (if it is not the applicant) is not required, and so it will not have a right of veto, but it will come in on the same footing as statutory undertakers, and others who have received notice of the application and are entitled to be heard. Finally, it should be mentioned that an application under s. 108 and an order of the magistrates' court under that section may provide for continuance of a footpath or bridleway along a highway which otherwise is stopped or diverted.

Section 109 enacts that a person who desires a highway to be stopped or diverted but is not authorized to make an application under s. 108 may request the appropriate authority to make an application. He could have done this without such an express enactment, but the sting of the section is in the last four lines, which say that the appropriate authority may require him to pay the costs.

With ss. 110 and 111 the Act comes to specific provision for stopping or diverting footpaths and bridleways without going before the magistrates. These sections follow ss. 43 and 42 respectively of the National Parks and Access to the Countryside Act, 1949, with some slight amendment. The method is an order of a local authority confirmed by the Minister of Housing and Local Government, and there is elaborate provision for ensuring that all persons affected have the right of being heard. In particular sch. 7 enacts that if objections are duly made and not withdrawn the Minister must direct a local inquiry or at least a hearing by a person appointed for the purpose, and, if a diversion order under s. 111 provides for creating a new right of way over land used for the purpose of a statutory undertaking, the Minister's order is to be subject to special parliamentary procedure if the statutory undertakers maintain objection.

Section 113 contains supplementary provisions about the costs incurred in consequence of an order under the preceding sections and the cost of maintaining a diverted path. This section also contains special protection for statutory undertakers, but without the provision for special parliamentary procedure.

In speaking of s. 108 we mentioned that the exclusion from that section of trunk roads and special roads had a curious consequence in later sections. This is that in ss. 110 and 111 there is a parenthetic exclusion of trunk roads and special roads. Lord Reading's committee purported to explain this simply by referring back to s. 108, but ss. 110 and 111 are confined to footpaths and bridleways, and it is hard to see how either of these can be a trunk road or special road.

Section 114 goes back to the Highway Act, 1835, and enacts that a highway authority which is about to repair or widen a highway may construct a temporary highway on adjoining land for use while the work is in progress. The like power is exercisable by any other person who has the obligation of maintaining a highway. Compensation must be paid for any

damage, and the section is not to authorize interference with the site of a house or garden and certain other types of enclosed land.

Part VII of the Act comprises 49 sections dealing with lawful and unlawful interference with highways and streets. There is not much new law, but some obsolete provisions have been left out and there has been a general tidying of old provisions. Here again, we do not think it necessary to go into much detail, because readers who study the side notes to the sections will find many old provisions reenacted, provisions which imposed penalties for a variety of unlawful acts in a highway or beside a highway and in some cases authorized acts to be done in a highway. We call particular attention in this context to s. 155 providing for carriage crossings over footways. It gets rid of the very unhappy s. 18 of the Public Health Acts Amendment Act, 1907, in favour of a provision based on common form local legislation. The duty created by s. 26 of the Local Government Act, 1894, which required district councils to take steps for protecting highways, will in future be found embodied in this part of the Act, as will the powers of parish councils or parish meetings to make representations against obstruction of or encroachment on a highway. It seems awkward to find the words "and Streets" suddenly appearing in the main heading of this part of the Act, and again in some cross-headings of groups of sections. The reason seems to have been a desire to reproduce certain provisions which did not extend to all highways, such as s. 130 of the Act about allowing soil to be washed down into streets. It might have been better if this provision had been extended to highways generally, instead of being confined to streets; the difference in the law is very slight. The same applies to s. 132, which deals with the opening of doors outwards on streets, and could (one would suppose) have been made to agree with the language of s. 133, which deals with gates opening outwards upon highways. So also in some later sections of this part of the Act, dealing with encroachments and the like, we see no real reason why the provisions should not be applied to all highways whether technically streets or not—the more so in view of the ambiguity of the expression "street." It is true that such an extension of the existing provisions in this part of the Act would have meant a slight technical extension of its powers and scope, but in this context we do not think this need be regarded as a disadvantage.

Part VIII of the Act is headed "New Streets" and brings together the provisions about byelaws in s. 157 of the Public Health Act, 1875, which had survived the repeal of a large part of that section by the Public Health Act, 1936, and also a number of provisions about the width and construction of new streets which had been superimposed on the byelaw provisions by legislation of the present century. The provisions about byelaws which are the foundation of this complicated structure are brought into line with the provisions about building byelaws in the Act of 1936. So far as this goes, it will get rid of some differences of procedure which were slightly irritating in practice, without seriously altering the substance of the law. The subsidiary provisions starting with s. 163 of the new Act and going on to the end of part VIII are based principally upon the Public Health Act, 1925, with a few provisions of the Public Health Acts Amendment Act, 1907, but with the removal of some provisions in those Acts which had caused difficulty in practice. For an understanding of the alterations, reference should be made to the detailed comments of Lord Reading's committee on the Bill. For some years past the opinion has been widely held that byelaws with respect to new streets had outlived their usefulness, because of the wide discretionary powers possessed by local authorities under the Town and Country Planning Act, 1947, but the advisers of the Minister of Housing and Local Government have apparently taken the view that these byelaws still have their place, if only as a basis for the application of planning powers, and the model byelaws for the guidance of local authorities have been kept up to date. It would presumably have been beyond the scope of Lord Reading's committee to go into the question whether the provisions about byelaws, now occurring in part VIII of the new Act, could be swept away altogether. Time alone will show how much they will be used.

(*To be continued*)

PUBLIC TRANSPORT AND SMOKING

Some readers may be surprised to learn that the lower decks of two-decker omnibuses are not necessarily reserved for non-smokers. The regulations of the Minister of Transport and Civil Aviation attract a penalty under s. 111 (3) of the Road Traffic Act, 1930, for smoking in a part of a public service vehicle where smoking is not permitted, but the relevant provision takes effect only where there are notices displayed forbidding smoking: *see* para. (xvi) in reg. 9 of the Public Services Vehicles (Conduct of Drivers, Conductors, and Passengers) Regulations, S.R. & O. No. 619 of 1936. The display of these notices is not in itself obligatory: whether they shall be displayed depends upon the conditions attached to the licence by the Traffic Commissioners. In London, and we believe generally in the south of England (possibly in other parts), this is the normal practice, so that persons who wish to smoke must go upon the upper deck. Where an omnibus comprises only one compartment, it is nowadays usual for smoking to be allowed throughout, though sometimes a notice is displayed asking (not requiring) smokers to use the rearward seats. It seems that in some parts of the north of England it has not hitherto been customary to reserve the lower deck of a two-decker omnibus for non-smokers, and it was the imposition of a new condition in this sense in the northern area which gave rise to a case recorded in *The Times* of August 13. It seems that the Traffic Commissioners for the northern area had imposed this condition as the result of representations from the county council of Durham and the North Eastern Federation of Trades Councils. Against this condition the Northern General Transport Company and the Sunderland District Omnibus Company had appealed to the Minister of Transport and Civil Aviation, and a public local inquiry into the appeal was held on August 12 by an inspector appointed by the Minister. Counsel for the county council of Durham said the companies had contended that they could not cater for a minority, and that the majority of their passengers wished to smoke in both parts of their omnibuses. It was, however, counsel contended, vital to the conduct of public affairs that the majority should not be catered for to the complete exclusion of the minority. The county council (he said) had asked for the ban on smoking in the lower decks of omnibuses as part of their health education programme, and he argued that it was a matter of good manners, courtesy, and common sense because, if smoking was allowed everywhere, there was no freedom of choice for other people. The county council had intimated that they would ask for a similar restriction

whenever future licence renewals were considered by the Traffic Commissioners. The solicitor representing the transport companies argued that the decision of the Commissioners was against the weight of evidence, and had been based largely upon so-called "evidence" which amounted to no more than expressions of opinion. The Government (he said) set a correct example by publishing the medical report on the relation between smoking and lung cancer, and then leaving the public to make up its own mind. The companies believed that 90 *per cent.* of their travellers wished to be at liberty to smoke anywhere on the bus, on their way between home and work. This is all very fine, and no doubt the Minister of Transport and Civil Aviation must decide the appeal upon the evidence, and will give due weight to the argument that much of the so-called "evidence" consisted of mere expressions of opinion. On the other hand he will not necessarily assume that the 90 *per cent.* of people who according to the appellant companies wish to smoke anywhere upon the omnibus, would still wish to do so if they realized what the effect might be on the health of the other 10 *per cent.* or some of them. This matter of making accommodation available for non-smokers, and reserving it for them, is at the present day commonly represented as if it was merely a matter of personal convenience, and personal preference among travellers, in which case there would be something to be said for the contention that the minority must suffer—as the late Augustine Birrell once remarked in the House of Commons, in a different context. The decision of the Government to take no effective action upon the medical reports dealing with lung cancer is beside the point. Nobody supposes that it is cancer of the lung which threatens passengers who are incommoded by other people's smoking, or that the greater number of the people who smoke in public service vehicles are themselves going to be victims of cancer. It might be legitimate to solve the question upon a basis of the wishes of a majority, if it were merely one of convenience, like the question argued in letters to *The Times* about aeroplane accommodation, namely whether vehicles should be built to carry as many passengers as possible, notwithstanding that a minority of passengers would be prepared to pay a higher fare for a more comfortable vehicle. The fact is, however, that for some people, who are obliged to travel by public service vehicles or by train, freedom from smoke is a question not of convenience but of health. Persons who suffer from some complaints of an asthmatic type or chronic bronchitis, but are not disabled from ordinary work, can travel in public service vehicles without danger to themselves or others, but for many such persons it is detrimental to travel in a smoking carriage, either in a road vehicle or by train, and it may have the effect that for the remainder of the day and even throughout the following night they are laid low by asthma. For our part we hope the Minister will uphold the Traffic Commissioners in this case, even if it does mean that the majority of travellers by omnibus in the north eastern area of England are restricted in the number of cigarettes they can smoke on the way to and from work; we hope further that the transport companies concerned will instruct their uniformed staffs to see that the conditions imposed by the Traffic Commissioners are observed. The majority could without particular hardship go without smoking for the short period of the journey, if they are unable to find a seat in the part of the vehicle which is reserved for smokers. The hardship, therefore, is all on one side and the revised practice (which the Traffic Commissioners of the northern area are now attempting to bring into conformity with practice in London and the south of England) will be no more than a recognition of the right of persons suffering from recurrent bronchitis, asthma, and similar complaints to go about their business without unnecessary detriment to health.

ANNUAL REPORTS, ETC.

THE NATIONAL ASSISTANCE BOARD

The report of the National Assistance Board for the year ended December 31, 1958, shows that the total net expenditure during the year was about £139,120,000 made up as follows:

	£
National assistance grants	116,600,000
Non-contributory old age pensions	13,800,000
Receipts centres and re-establishment centres	426,000
Polish hostels	64,000
Hungarian hostels	130,000
Administrative expenses	8,100,000

The number of applications for assistance dealt with (apart from applications for grants to meet charges under the National Health Service) was 2,161,000. The number of weekly allowances being paid in December was about 1,649,000, which, including dependants, made provision for about 2,361,000 persons. Five hundred and seventy-four recipients were men and 1,075,000 were women. One million one hundred and thirty-four thousand of them were over the minimum pension age. The total number of weekly allowances paid as supplements to the various national insurance benefits represented about 68 *per cent.* of all weekly allowances. The recipients included 660,000 persons who were living alone. Only 35,000 were in residential accommodation provided under the National Assistance Act, 1948. Twenty-nine *per cent.* of the recipients were tenants of local authority dwellings as compared with 27 *per cent.* at the end of 1957. Rent is allowed for separately as an addition to the amount allowed under the scale and at the end of the year the rent was being provided for in full in the allowances of 1,067,000 of the 1,255,000 householders with outgoings; in 169,000 of the 188,000 other cases the household included at least one earning member able to take responsibility for part of the relatively high rent.

The report gives information as to the scale rates which had been increased six times since 1948. The ordinary scale for a husband and wife was then 40*s.* and by stages was increased to 65*s.* which was the rate in January, 1958. (Since the issue of the report the rate has been increased further.)

The regulations empower the board to adjust the assessment where there are special circumstances. At the end of the year about 780,000 allowances were so increased, *i.e.*, over 47 *per cent.* of the total number in payment. The average was 7*s.* 1*d.* a week. Additions are often made in the same case for more than one item of special expenses, and the total number of additions for different items was about 1,250,000. They included about 431,000 additions for special diet, 374,000 for laundry, 258,000 for exceptional fuel requirements and 136,000 for domestic help. One hundred and fifty-two thousand single payment grants were made to meet an exceptional need. About 65 *per cent.* were for clothing and footwear only, the remainder being mainly grants for bedding only or for bedding and clothing together. Assistance amounting to £1,787,000 was granted to meet National Health Service charges. Nine hundred and seventy-two thousand pounds represented the refund of charges for prescriptions, £506,000 to meet charges for spectacles, £280,000 for dentures and dental treatment and £39,000 for surgical appliances.

Where a man liable to maintain a person receiving assistance is failing to do so, it is open to the board to proceed against him under s. 43 or s. 44 of the National Assistance Act, 1948. Action was taken in 163 cases. It has always been the board's view, however, that it is better for the woman concerned herself to apply to the court for a maintenance or affiliation order and if necessary to meet the cost of her legal representation. This the board did in nearly 600 cases during the year.

A separate section of the report deals with the accommodation of persons without a settled way of life—or casuals as they used to be called—in re-establishment centres and reception centres. There was a marked increase in the number of persons accommodated in reception centres although it was generally below the figures for 1957.

Legal Aid

Referring to the work of the board's officers in connexion with the administration of the legal aid scheme it is noted that 39,722 applications were referred for assessment of resources by the committees of the two law societies as compared with 41,488 in 1957 and 43,820 in 1956. Of the total, 3,746 applications were withdrawn before the assessment was completed, 33 *per cent.* of the cases determined were found to be entitled to free legal aid, 52 *per cent.* to aid subject to a contribution and 15 *per cent.* to be outside the financial limits of the scheme. These figures relate only to the findings of officers of the board and take no account of applications subsequently rejected by the law societies on legal merits or of applicants who eventually decline to accept legal aid on the terms offered or settle their disputes without litigation.

CENTRAL HEALTH SERVICES COUNCIL

The annual report made to the Minister of Health by the Central Health Services Council shows, as pointed out in an introductory statement by the Minister, the very wide range of the council's activities and the great value of being able to look for advice to a body with such a wealth of experience in so many different fields. The Minister commends in particular the report of the committee on hospital supplies as this is a field in which he believes much can be done to save money and improve efficiency. A main point in this report is the suggestion that the Ministry, which has a great amount of detailed information about supplies, and regional boards should take a more active part in encouraging hospital authorities by co-ordinating their activities and pooling information on matters of common interest.

Another matter of general interest which is noted in the report is the welfare of children in hospital which was the subject of a special report. This highly personal subject is dealt with in an understanding and practical way and the Minister has expressed the hope that all hospital authorities will have approached in the same spirit the review of their own arrangements for the care of children which he has asked them to make.

One of the subjects which has been considered by the standing mental health advisory committee is the adverse publicity which mental and mental deficiency hospitals sometimes receive. The department's principal press officer described the methods which his office was using, with some success, to obtain informed publicity on questions of mental health and the gradual but steady improvement in the standard of reporting of mental health matters by the press. The improvement was thought to have resulted from such factors as the mental health exhibition, open days at mental hospitals, press visits to mental hospitals, the activities of voluntary associations and so on.

A fresh matter which has been referred by the council to a sub-committee results from the public interest which has been aroused by the question of the waking time of hospital patients and the problem of noise control in hospitals.

COUNTY BOROUGH OF WOLVERHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1959

The authorized establishment and actual strength of the force are not given in the report but it is stated that the latter increased by six during the year. There were only 15 accepted candidates, four of whom had served formerly as cadets in the force. "It is becoming more and more apparent that the cadet system is the most satisfactory source of recruitment from all angles." Home Office approval has been asked for an increase in the authorized establishment of 28 in order that the additional rest day per fortnight can be given to all ranks up to inspector.

In a comment on the low percentage of passes in the "nationalized" promotion examinations the chief constable comments that candidates must be prepared to undertake constant and regular study and that intensive preparation a few months before the examination is quite inadequate. He regrets the abolition of special pay increments formerly payable to men who had passed their examinations and who showed sufficient zeal.

Another considerable increase in recorded crimes brought the 1958 total to 2,748. The 1957 figure was 2,213. Breaking offences accounted for 262 of the increase, and this represents a 74 *per cent.* increase in that class of crime. In the chief constable's view the principal means of combatting the increase in crime is to provide more policemen. He notes that when in the early months of 1959 police had to be withdrawn from normal duties to deal with certain very serious crimes, crimes of all kinds, particularly breaking offences, increased to many times the normal rate which was restored as soon as the police returned to their ordinary duties.

Of the 2,200 registered aliens the chief constable states that with few exceptions they are industrious, thrifty and law abiding people.

The chief constable's annual report to the Accident Prevention Committee is included as an appendix, and gives full information about that ever-growing problem. Considerable space is devoted to a cycling proficiency scheme which was started in 1958 and it is stated that it goes far beyond the training of children to ride cycles safely. Its aim is to teach roadmanship on a vast scale to future generations of road users of all classes, an object worthy of considerable effort.

PROBATION IN NORTHERN IRELAND

As in England, so in Northern Ireland the probation service is much concerned about juvenile offenders. In his report for 1958 Mr. C. A. Duke, senior probation officer, says that it was hoped that the raising of the school leaving age to 15 a few years ago might reduce the number of delinquents of 14 years of age as that age group would be at school for a further year instead of as is usually the case being unemployed or in a dead end job. Unfortunately this hope was not realized, the total for the 14–17 age group being actually greater than last year. What is encouraging is that probation among juveniles appears to be meeting with considerable success. On an average only 14 *per cent.* of those placed on probation ever come before the courts again.

It is stated that approximately 94 *per cent.* of the total number of probationers are under the age of 21. This is a striking percentage, but it does not necessarily mean that offenders in the older age groups are not being put on probation; it may be that the number of older offenders is small compared with the younger. It is to be hoped that the idea that probation is for the young only is not still held.

That moral standards among those who commit offences mostly of dishonesty, are low is shown by the statement that only in a very few cases do those concerned express any real regret or remorse.

ISLE OF ELY PROBATION REPORT

The report of the probation officers for the Isle of Ely combined probation area for 1958 was made by Mr. E. B. Hurdle and Mrs. J. E. Rauer, but Mrs. Rauer died shortly after it was compiled, and her loss is a matter of keen regret to all those who came in contact with her.

The report begins with some particulars of the history of the probation service in the county since the formation of the combined area. The full-time male officer began with a case load of 38 and the part-time female officer had four women under her supervision. From that time case loads went up and down, but mostly up and the male officer had in 1958 a case load of 72 plus 12 after-care supervision cases. The late Mrs. Rauer had a case load of 35 including 14 boys. During 1958, 88 new orders were made. In 1958 there were four more male adults than male juveniles under supervision. In fact 1958 was the first year that the male adults outnumbered the male juveniles.

Turning to after-care, the report says "We feel that we are indeed lucky in this area in having a number of firms who are always willing to help with employment if they have a vacancy. We hope that we shall continue to have their support especially as employment is becoming increasingly difficult to find."

That there is room for a difference of opinion about summer camps for probationers, which many probation officers have praised, appears from the following. "The summer camp for probationers was not held this year. After careful consideration it was felt that the disadvantages outweighed the advantages. Although an ideal way of getting to know those under supervision it was felt that probationers should not be made to think that they are 'a race apart.' There are in the Isle many organizations and clubs who run summer camps most efficiently and every encouragement is given to those under supervision to join and take advantage of the excellent facilities offered."

CITY OF SHEFFIELD: CHIEF CONSTABLE'S REPORT FOR 1958

The actual strength of the force on December 31, 1958, was 699, with an authorized establishment of 815. The chief constable states that in spite of every effort to attract suitable recruits the actual strength increased during the year by only five men and one woman. There was, however, a slight improvement in recruiting at the beginning of 1959 and it is hoped that this will be maintained. There has been no lack of suitable candidates for either the junior or the senior cadets and "a most gratifying feature has been the number of applications received from the sons of serving or retired members of the force."

It is recorded that on the occasion of the visit of Her Majesty the Queen Mother on May 17 and 18, 78 special constables volunteered for duty and gave valuable assistance to the regular force in street patrols and crime prevention work. They contributed in no small measure to the success of the police arrangements.

Recorded crimes again showed an increase. The 1956, 1957 and 1958 figures were 4,430, 4,973 and 5,495 respectively. One of the big increases in 1958 was in breaking offences, but mere numbers do not give a true picture. For instance, one offender who was dealt with at Assizes, charged with burglary and housebreaking, had 106 similar offences taken into consideration. The offences remain, but they do not, in this case, mean a corresponding increase in the number of offenders. It is, however, to be very much regretted that a criminal can commit over 100 such offences before being brought to justice. Similarly, a man convicted of four thefts from unattended cars had 141 similar offences taken into consideration. In all, 1,334 persons were prosecuted for crime, 371 being juveniles.

The use of the procedure under the Magistrates' Courts Act, 1957 (pleading by post) was estimated to have saved 6,428 hours of police time in attendance at court and "it has thus been possible to give more attention to those matters connected with beat and motor patrol duties" and "less inconvenience has been caused to police officers during off-duty hours and this has, naturally, been much appreciated."

It is proposed to make use of a radar speed meter where and when it will prove most effective. One has been ordered after consideration of reports on an experimental use of such a meter during September, 1958.

CONFERENCES, MEETINGS, ETC.

THE CARE OF THE AGED

National conferences on the care of the aged are now recognized as an important feature. It is even more important that there should be local or area conferences where those concerned in the different aspects of this increasing problem have the opportunity of meeting to discuss ways in which better provision can be made as well as in avoiding overlapping and bringing about greater co-ordination of the services provided by the hospital, the local authority and the voluntary agency. The Yorkshire Regional Hospital Board has given an example to other regions as to how such a conference may be usefully arranged. It might be expected that a conference arranged by a Regional Hospital Board would be confined to the consideration of problems immediately affecting hospitals but the Yorkshire board saw the importance of bringing into the discussions the services provided by local authorities as well as by voluntary organizations.

One of the most valuable features of the arrangements for the conference recently held at Harrogate was the exploratory work which was undertaken by a group of general practitioners. This resulted in a paper entitled "Geriatrics and the family doctor" in which the role of the family doctor was outlined, the medical needs of old people were shown and the resources which should be developed to meet them. A plea was made for more co-ordination between all concerned. It was agreed that the best place for old people was their own home even usually when they become ill. The view was expressed that the care of the aged should primarily be the concern of their close relatives but that where medical care of a hospital type is needed then the aged rank with any other sick person needing attention. On the accommodation of the aged in old people's homes it was considered that many of the residents would be happier in simpler surroundings than some of the new homes which are being provided.

The conference was opened by Dr. E. M. Bluestone, consultant to the Montefiore hospital, New York who urged that in planning for the elderly there must be a thorough programme of preventative medicine in all its possibilities. He said that all medical effort should be integrated on a continuing basis in order that it may be available, and immediately applicable, in all places and at all times, for age as well as for youth, for the "chronic" as well as the "acute."

Mr. S. J. Partridge, M.B.E., county welfare officer, East Riding of Yorkshire dealt comprehensively with "Community services for the elderly" and stressed the importance of voluntary help and its co-ordination with the local authority welfare services. Co-operation was also one of the themes in a paper giving the views of the geriatric physicians of the region. They referred to the valuable work of the local old people's welfare committees and in this connexion special reference was made to the needs of elderly persons who are mentally disturbed. Voluntary services for the aged were dealt with in a paper by Mr. John Moss, C.B.E., chairman, National Old People's Welfare Council. He said the voluntary organizations want to help in every possible way—in co-operation with the statutory authorities—but he stressed that there must be understanding on each side and mutual realization of the other's point of view. The "Contribution by local health authorities to the care of the aged" was the subject of a paper by Dr. Alexander Hutchinson, medical officer of health, Kingston-upon-Hull. On the prevention of accidents he suggested that medical officers of health should play a very vigorous part in bringing to the notice of their local accident prevention committees the necessity for the provision of special road safety services for old people.

REVIEWS

Oyez Table No. 11. Penalties etc. for the Commoner Road Traffic Offences on Summary Conviction. Compiled by J. Lionel Wood, M.C., clerk to the Worcester city justices. The Solicitors' Law Stationery Society Ltd. Price 2s. 6d. net.

This table is clearly intended to save justices and their clerks trouble in ascertaining what are their powers on convicting defendants of the offences which are listed in it. The compiler of such a table is always in a difficulty in deciding which offences to include and which to omit, and we do not think it reasonable to criticize it on the ground that some other compiler might have included other offences.

There are, however, one or two instances in which we think criticism is justified since the value of any such summary depends upon its being completely accurate especially when, as in this case, the relevant sections or regulations are not cited and quick reference to them cannot be made from the table. The penalty for "no insurance" is shown as £50 or three months. Reference to s. 35 (2) of the Road Traffic Act, 1930 shows that the words "or both" should be added. Again, we do not think that the entry under "disqualification, second or subsequent," against dangerous driving is adequate. The disqualification is compulsory unless the court by reason of three or more years having elapsed since the last conviction *or for any other special reason* thinks fit to order otherwise. There is, in the table, no reference to other special reasons. The entry under "remarks" against "driving while disqualified" is not clear. It reads "fine impossible only on special circumstances" surely this should read either "possible only" or "impossible except."

We regret having to make these criticisms but we feel that they are necessary when we are dealing with a publication which is intended, we imagine, to be relied upon without reference to text books or statutes.

Acts of Parliament Concerning Wales, 1714–1901. By T. I. Jeffreys Jones, M.A., Cardiff: University of Wales Press. Price 35s. net.

This compilation of public and private statutes is produced under the auspices of the Board of Celtic Studies in the university of Wales. The dates and the subject generally have no particularly "Celtic" reference, but the way in which a predominantly English Parliament has dealt with Wales is no doubt important in the history of Welsh affairs. As was to be expected, the greater number of Acts in the first half of the period covered are private Acts, and there is usually no difficulty in determining whether such an Act relates to Wales alone. In public general Acts in the latter part of the period covered, there were frequent special provisions for the Welsh language or for meeting Welsh conditions. The learned editor's introduction examines the distinction between public and private Acts, and this part of his work would be valuable to a reader in any part of the kingdom. The body of the book itself is not likely to have a general appeal, except to historians and academic lawyers concerned with Welsh

affairs, but for them it will be valuable—containing, as it does, information which has never previously been brought together. It should be said, in order to avoid misunderstanding, that it is the long titles of the statutes which have been collected. It is still necessary to refer to the statutes themselves when the reader wishes to know what was enacted.

Preparation for Retirement or Adjustment to Ageing. A report by the National Old People's Welfare Council. Published by the National Council of Social Service, 26 Bedford Square, London W.C.1. Price 1s. 6d.

Many questions face people who are approaching retirement; how to occupy their time; where to live; whether to seek a part-time job; how to make ends meet; questions of health, of loneliness, and of finding significance for their later years. This booklet is in the nature of an introductory report to show how some of these questions can be answered. The subject has received considerable prominence in the United States but not, up to the present in this country. It is clearly of great importance as the steady increase in the proportion of the elderly in the community will bring many problems. Obviously one way to lessen these problems is for people to endeavour to plan for the future themselves. The report shows various ways in which people in middle life and even earlier may plan for their later life when they have to retire from active work. It can be commended as one step forward to constructive action in this field.

Police. By John Coatman. London: Oxford University Press. Price 7s. 6d. net.

The author of this book joined the Indian Police Service in 1910, served in the Frontier Constabulary in the first World War and in various local campaigns thereafter. He is one of only five people who have been awarded a bar to the King's Police Medal. From 1930–34 he was Professor of Imperial Economic Relations, University of London and he has held other public appointments.

In this book he examines the origin of organized police forces in this country and elsewhere, he compares the organization in various countries and deals, *inter alia*, with the very important matters of the police, public and press, international co-operation, police and society and, last but not least, the problems of the future in the recruitment of sufficient men and women of the right type to ensure the adequate carrying out of the ever increasing duties which the police are expected to perform.

The countries whose police forces are dealt with in most detail are this country, the United States, Germany and France. There is so much ground to cover that the book seems at times to be a little disjointed and with a certain amount of repetition. We think, however, that it can profitably be read by all who are interested in good government and the due enforcement of the law, and particularly by any who are inclined to criticize the police in this country. The present is a particularly appropriate time at which to consider the problems which face the police in the war against crime and this book provides much useful information as a background for such consideration.

PERSONALIA

APPOINTMENTS

The Queen, on the recommendation of the Lord Chancellor, has appointed Mr. J. H. Aubrey-Fletcher to be a Metropolitan magistrate.

Mr. James A. McDonald, senior assistant solicitor to the town clerk of Wigan, Mr. Allan Royle, has been appointed deputy town clerk of the county borough of Bury. He will take up his appointment at Bury on October 1, next. Mr. Ronald B. Taylor has been promoted from assistant solicitor to senior assistant solicitor to fill the vacancy at Wigan.

Mr. Leonard George Johnes, solicitor and deputy clerk to Hatfield, Herts., rural district council, has been appointed clerk to Hoddesdon, Herts., urban district council, as from September 28, next. Mr. Johnes, who began his local government service at Southwark in 1936, served with Stevenage development corporation before taking up his Hatfield appointment just over two years ago.

Mr. Eric Rowles, deputy clerk to Witney, Oxon., rural district council for the last 19 years, has been appointed clerk in succession to Mr. R. A. G. Ravenor, who has resigned through ill health. He will be acting clerk until Mr. Ravenor's resignation becomes effective on October 31, next.

Mr. R. F. Marshall, who is at present assistant to the clerk to the justices for the Northampton and Daventry petty sessional divisions, has been appointed to a similar post in Sheffield and will commence duties there on November 1, next. Mr. Marshall was employed as a junior clerk in Sheffield for five years prior to taking up his appointment in Northampton in 1954.

Mr. Edward F. Gallagher, deputy clerk to the justices serving the Newark and Southwell areas of Nottinghamshire for the past nine years, has been appointed clerk to the justices of the Bolton petty sessional division of Lancashire. Mr. Gallagher is 37 years of age and was admitted in March, last. Prior to his service at Newark, Mr. Gallagher served in the Burnley, Lancaster, and Mansfield magistrates' courts. He takes up his new duties on October 1, next.

Mr. Eric V. Staines, chief constable of Derby, has been appointed chief constable of Sheffield, to succeed Mr. George E. Scott. On November 1, Mr. Scott becomes chief constable of the West Riding of Yorkshire. A former commandant of the Police Training Establishment at Harrogate, Mr. Staines became chief constable of Derby three years ago. He served in the Leeds city police force in 1933 and in 1939 was seconded to the Home Office and then appointed regional staff officer for the North East Civil Defence Region. He became a sergeant in 1940 and in 1945 returned to the Leeds city police force, being transferred to the C.I.D. In 1948 he was promoted detective inspector. Mr. Staines is 47 years of age.

Mr. John E. Townsend, Miss Molly I. Fraser and Mr. John D. Banwell have been appointed probation officers to serve the Southampton county borough probation area. Two of these appointments are consequent upon the resignations of Mr. P. E. Russell, now liaison officer for the Hampshire combined probation area and Miss L. Shuttleworth, now a whole-time officer with the Devon combined probation area. The third appointment is a newly created post.

RETIREMENTS

Mrs. D. A. Hugh-Jones, M.A., retired from the Oxfordshire probation service on August 31, after 27 years as a probation officer in Oxfordshire. She was appointed a part-time officer in 1932, and apart from three years war service in the Women's Royal Naval Service, has remained in Oxfordshire ever since, becoming a full-time officer in 1951.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

With reference to P.P. 3, at p. 421, *ante*, dealing with the forfeiture of a licence on conviction of a licence holder charged with permitting licensed premises to be used as a brothel, my attention was drawn to the discrepancy in *Paterson* some time ago by a correspondent.

I gave some consideration to the notes referred to in the Practical Point, which stem from the Licensing (Consolidation) Act, 1910, and came to the conclusion that the note on p. 990 of the current edition of *Paterson* must be deleted as unsound. In my opinion, s. 23 (*d*) of the Act, provides for the grant of a protection order when the licence holder has been disqualified for the first time through a conviction for keeping a brothel.

The matter has been dealt with by way of amendment to the text of *Paterson* and the next edition will show what I believe to be the true position.

Yours faithfully,
F. MORTON SMITH.

Justices' Clerk's Office,
Magistrates' Courts,
Market Street, Newcastle upon Tyne, 1.

[We are obliged.—*Ed., J.P. and L.G.R.*]

NOTICE

A Votive Mass of the Holy Ghost (the Red Mass) will be celebrated on Thursday, October 1, 1959, at Westminster Cathedral in the presence of His Eminence Cardinal Godfrey, Archbishop of Westminster. The Rt. Rev. Monsignor Charles L. H. Duchemin will be the celebrant. Counsel will robe in the Chapter Room at the Cathedral; the seats behind counsel will be reserved for solicitors. Those desirous of attending are asked to inform the Hon. Secretary, Society of Our Lady of Good Counsel, 6 Maiden Lane, W.C.2.

NOT CRICKET

A considerable measure of indulgence will be permitted to that intelligent foreigner who once surmised that Lord's was so named because cricket, in England, is a religion. The reverent crowds who wait before the turnstiles at St. John's Wood; the silent, intense congregation of watchers on the village green; the special editions of the evening newspapers, announcing the number of runs achieved for so many wickets; the knighthoods awarded to expert practitioners of the art; and the Commonwealth tours arranged for famous teams—all these things tend to convey to the unlearned the impressive truth that cricket is a very, very serious business indeed.

But, if it is an exaggeration to describe cricket as a religion, the observance of its laws is proverbially regarded as a test of morality. The expression "It's not cricket" is colloquially used to signify that the behaviour referred to is unethical—something to which no decent man would lend himself if he wished to retain the respect of his fellows; the phrase has a subtly different connotation from the near-synonym "It's not playing the game." Not to play the game according to the rules involves a certain social obloquy; but there are games and games, of varying degrees of respectability. Few people would regard *baccarat*, baseball or billiards in the same class with cricket. The first is of foreign European origin, and therefore (by inference) suspect to the clean-limbed Englishman; the second has transatlantic associations with cheer-leaders, mob-hysteria, unprincipled match-promoters, commercialized deals, or downright corruption, and the worship of brawn as opposed to brain. The third suggests the atmosphere of the "pub," gambling and the activities of the "sharper." Even the parson may be an enthusiastic member of the cricket team without forfeiting the parishioner's respect for his cloth; but who ever heard of a clergyman speaking with complacency of his prowess with the billiard-cue or at the card-table?

Hence the aptness of a brief letter which appeared last month in *The Times*:

"Sir,—Is it cricket to hypnotize footballers?"

The question arose out of an earlier announcement in the same newspaper to the effect that "a Scottish First Division side" had invited a hypnotist "to try to restore confidence" in one of their players. Subsequently, the director of a Southern League Club was reported as saying that he believed the hypnotist in question "could help them considerably in their struggle to get into the Football League." The practitioner, when interviewed, made the following comment:

"I shall be giving them hypnotic help before the kick-off,"

a statement which must be a rare example of the figure of speech known as "oxymoron." The layman thinks of hypnosis as the inducement of a sleep-like condition; the very name is derived from Hypnos, the Greek God of Sleep. Poets for hundreds of years have sung the praises of Sleep—in the words of Sir Philip Sidney:

> "The certain knot of peace;
> The baiting place of wit, the balm of woe."

To Macbeth it was:

> "Sleep that knits up the ravell'd sleeve of care,
> The death of each day's life, sore labour's bath."

For Shelley sleep is "strange and wonderful," twin-brother to death himself. What have all these restful metaphors to do with "the kick-off," the shrilling of the referee's whistle, the charge, the rough-and-tumble in the mire, the scramble in the goal-mouth? Hypnos might well be aptly invoked, and readily manifest himself, to the quiet spectators of those immaculately flannelled figures, strolling unhurriedly (at the end of each "over") across the pitch. But what concern has he with those flaying arms in multi-coloured vests, those half-bare legs in mud-bespattered stockings and ragged shorts, careering at full tilt the length and breadth of the field, while 20,000 throats shriek hoarse encouragement to their side?

Professional football has much in common with the gladiatorial combats of Imperial Rome. There is the fierce struggle in the arena, the wary, sweating antagonists below; above, the crowded benches, the fanatical devotees enjoying a vicarious thrill, the meretricious hangers-on, the punters, the betting men, the gamblers for large stakes. But who ever heard of money being won in a cricket-pool? Cricket, if it has a parallel in the Ancient World, recalls the Olympic or the Isthmian Games, where the flower of Hellenic athletes competed for the simple olive wreath. The Greeks, in the Classical Age, were skilled participants, contending for the honour of their State; the Romans, by and large, were noisy, brutal spectators, attending the Circus as loungers, playboys and layers of odds. The opening of an Olympiad was attended by something of the solemnity of a Test Match, the contestants swearing to obey the *laws* of the Games; the Roman gladiators, like the modern professional football teams, were expected to obey the *rules*, which are seldom heard of until they are broken. In that distinction lies a world of difference.

A.L.P.

ADDITIONS TO COMMISSIONS

DERBY COUNTY

Raymond Garrett Bettison, 28 Yew Tree Drive, Shirebrook.
Mrs. Elsie Jane Blaiden, 12 Sheffield Road, Killamarsh.
George Herbert Blanchard, Kilburn Hall, Kilburn, Derby.
Ignatius John Brady, 3 Athelstane Terrace, Buxton.
William Hubert Doxey, Hillcroft, Main Street, Middleton, Derby.
Harold Goodwin, Wheston, Corbar Road, Buxton.
Frederick Hambleton, Roughwood, Lightwood Road, Buxton.
John Renwick, Saint Cross, Ridgeway, nr. Sheffield.
John Newcome Theaker, The Grove, Swadlincote.
Dr. George William Rosslyn Thomson, 1 Derby Road, Ripley.

DURHAM COUNTY

Jaspar Cuthbertson Carr, 32 Station Road, Trimdon Station, Durham.
Arthur Cheesmond, 2 Buckingham Terrace, Leeholme, nr. Bishop Auckland.
Mrs. Edith Clennell, 45 Wynyard Street, Dawdon.
Matthew Cranney, 28 Cuthbert Street, Marley Hill, Sunniside, Newcastle on Tyne.
Sydney Charlton Docking, 6 Sanders Gardens, Birtley.
Frederick George Ford, 1 Morrison Terrace, Ferryhill.
Mrs. Margaret Esther Holmes, Whitburn Moor Farm, Sunderland.
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John Dowson Loughran, 20 Wynyard Road, Wolviston, Billingham-on-Tees.
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Mrs. Mary Williamson Strother, West Clere, Whitburn.
Cyril Frank Thring, 96 High Street, Norton, Stockton-on-Tees.
Joseph Vickers, 50 Cypress Crescent, Dunston-on-Tyne.
Miss Lila Watson, 12 Bridge House Estate, Ferryhill.
Gordon McIntyre, Crossways, Whitesmocks, Durham.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1958—*Mother's consent refused—Mother's right to return of child.*

An application has been made for an adoption order by a husband and wife who have had the custody of the child for nearly three years, and during such time the mother has not visited, nor inquired about, the child. The applicants have asked the court to dispense with the mother's consent on the ground that she has persistently failed without reasonable cause to discharge the obligations of a parent of the infant.

The mother, on being served with the appropriate notice pursuant to r. 12 (1) (*a*) of the Adoption (Juvenile Court) Rules, 1959, has now asked the applicants to return the child to her. The child has grown fond of the would-be adopters and has no feeling for, nor interest in, the mother.

If the applicants return the child as requested, then by virtue of s. 3 (1), the three months' continuous period will be broken and the application thereby defeated. The question whether the court would have dispensed with the mother's consent could also not be raised.

I shall be obliged by your valued opinion:

1. Have the applicants any right to refuse to return the child to the mother?

2. The mother not having given her consent, do you agree that the court does not appear to possess any powers to estop the position, so that the merits may be gone into?

VITELO.

Answer.

1. The applicants have no right to refuse to return the child to the mother, but it might be possible for them to retain care and possession until the date of the hearing unless the mother secures its return by writ of *habeas corpus* or some other means.

2. We agree that a magistrates' court has no power to intervene.

2.—Criminal Law—*Binding over to be of good behaviour—Forfeiture of part of recognizance—Effect on binding over.*

On July 29, 1958, A appeared before a court of summary jurisdiction upon a charge of common assault, the complainant being B, and also to show cause why an order should not be made binding him over to be of good behaviour. A was bound over in the sum of £50 to be of good behaviour for 12 months and required to enter into recognizance for this amount.

On April 21, 1959, A again appeared before the same court for a breach of the said recognizance, which was proved, and the court ordered him to forfeit £5, part of the £50. On July 7, 1959, A again appeared before the same court charged with larceny of a gate and attempted larceny of another gate, both the property of B, these charges being directly connected with the dispute which had given rise to the original trouble in 1958. A was convicted on the charge of larceny and fined £5, and on the charge of attempted larceny was given an absolute discharge and ordered to pay costs of £1 11*s.* 9*d.*

The question has arisen as to the position regarding the recognizance entered into in July, 1958. The condition was to be of good behaviour for a period of 12 months which period has not yet expired. There is doubt as to the effect of the order to forfeit £5 on the proceedings for breach of recognizance on April 21.

I shall be glad of your opinion on the following points:

1. On the effect of the order on April 21, 1959, to forfeit £5 upon the recognizance.

2. Does an order of the court to forfeit a sum of money mentioned in a recognizance terminate the recognizance before the expiration of the period of 12 months mentioned therein or does the recognizance continue in force for the full period irrespective of proceedings being taken to forfeit the same?

3. Is the matter affected in any way by the fact that the amount forfeited was £5 only, whereas the recognizance was for £50?

I would be glad of any authority on these points.

FORAWN.

Answer.

1. The order to forfeit £5 of the recognizance terminates the binding over.

2. Forfeiture of the whole or part of the sum of money mentioned in the recognizance terminates the recognizance. The defendant can be bound over again if a further breach of the peace is thought probable.

3. No.

The court, on proof of a breach of the recognizance must declare the recognizance to be forfeited, but, by s. 96 (3) of the Magistrates' Courts Act, 1952, it need not require payment of the whole sum in which the defendant was bound.

3.—Education Act, 1944, s. 57—*Child believed incapable of education.*

The appropriate committee of a local education authority has considered the case of a child, and authorized the issue of a notice to the parent to present the child for examination by a medical officer of the authority, under this section. Can the notice be served upon the parent or guardian of the child by the chairman of the committee, or would it be inadvisable? It is not desirable, for certain reasons, for the notice to be served by registered post.

CATOR.

Answer.

Section 113 authorizes service by delivery by hand or by letter (not registered letter only). If for special reasons (of humanity or otherwise) the chairman is willing to deliver the notice himself, we see no legal objection. The notice should be in proper form, and he should be prepared to prove service if necessary.

4.—Food and Drugs—*Sale of Food (Weights and Measures) Act, 1926—Defences available under s.* 12 (1) *and* (2).

An opinion is sought as to whether subss. (1) and (2) of s. 12 of the Act apply to charges under s. 4 (2) for pre-packing articles of food in other than prescribed weights. As these charges are not for an alleged deficiency in fact, because in some cases it would not be possible to decide whether there was overweight or a deficiency, *i.e.*, packages of three *oz.* or five *oz.*, I am of the opinion that defences under the two subsections are not available.

This opinion is not demolished by the cases of *Wolfinden* v. *Oliver* (1932) 147 L.T. 80, and *Cave* v. *Dudley Co-operative Society, Ltd.* (1934) 103 L.J.K.B. 569, and the notes thereon in *Bell's Sale of Food and Drugs.* These cases were decided under s. 6 (2) relating to bread. I think that there must be a distinction between weights of bread being an integral number of pounds and pre-packed food in quantities of two *oz.* for the reason given above regarding over or underweight.

HILA.

Answer.

We appreciate our correspondent's point of view, but we respectfully agree with the note in *Bell* that a prosecution under s. 4 (2) can, in fact, be described as being in respect of an alleged deficiency of weight or measure. Although it is true that the cases cited related to bread, we think they are of more general application. If an article is required to be sold in quantities of two *oz.* up to a limit of eight *oz.* but is, in fact, sold in packages of three *oz.* or five *oz.*, there is a deficiency of one *oz.* in each case.

5.—Food and Drugs—*Sale of Food (Weights and Measures) Act, 1926, s.* 12 (6)—*Notice of information.*

An opinion is sought upon the necessary wording of, first, the seven days' notice of intention to institute proceedings. Is it considered necessary in this notice to indicate more than, for example, ". . . alleged offence for having in possession for sale certain pre-packed articles of food, namely . . ., contrary to s. 4 (2) of the Sale of Food (Weights and Measures) Act, 1926"; or should the wording include the whole substance of s. 4 (2) including the requirements of both parts (*a*) and (*b*) of the subsection or only part (*a*)?

Secondly, in the actual information laid, must the article of food forming the basis of the charge be included on the information as it appears in sch. 1 (as amended by S.I. 1949, No. 2381) to the Act? For example, could the wording "dried fruit salad, the same being composed of articles of food set forth in . . ." be used or must the actual type of dried fruit as indicated in the schedule be put on the information?

FILA.

Answer.

We think in both cases that the wording suggested by our correspondent is sufficient. All that is required is that the offender should be in no doubt about the alleged offence and, in each

case, we cannot see that there is any possibility of misunderstanding the substance of the alleged offence.

6.—House Purchase and Housing Act, 1959—*Standard grants—Works necessary beyond standard.*

(*a*) Section 5 (2) of the Act requires a local authority, before approving an application for a standard grant, to be satisfied that after execution of the works specified in the application (and presumably these works will be only works necessary to provide the standard amenities) the dwelling will not be unfit for human habitation. If, on investigating an application, a dwelling is found to be unfit for human habitation for some reason which will not be remedied by the works in the application (*e.g.*, by reason of repair, stability or dampness defects) does this mean that the application cannot in any circumstances be approved until those defects have first been remedied? An alternative in practice would be an approval subject to certain specified works being done before payment of the grant is made, or an approval subject to an undertaking to do certain repair works at the same time as the standard grant works. Such a provisional approval seems, however, to be precluded by the wording of s. 5 (2).

(*b*) What is your interpretation of the phrase in s. 4 (1) (*d*) "a water closet in or contiguous to the dwelling"? If this means "touching" or "joining," cases may arise where a "contiguous" water closet at the end of a long rear wing to the dwelling is much further from the back door than a detached W.C. structure only a few feet from the back door. The acceptance of the former and rejection of the latter appears to be anomalous and would certainly give rise to criticism.

(*c*) Section 4 (5) requires a new hot water supply to be connected to a sink. What is the position where an applicant states that a hot water supply is already provided but on investigation it is found not to be connected to a sink, although connected to the bath wash hand basin? Would the local authority be justified in rejecting this as a hot water supply for the purposes of s. 4 (3)?

(*d*) If the statement required by s. 4 (3) is found to be incorrect must a local authority still approve the application provided they are satisfied as required by ss. 5 (2) and (3)?

PEROTA.

Answer.

(*a*) The repairs necessary to render the house fit for human habitation must be done before the local authority can be satisfied as to the effect of the works specified in the application.

(*b*) Contiguous means touching. We agree about the anomaly but we must assume that Parliament used the word deliberately, thus excluding a water-closet which in some cases would be more conveniently reached.

(*c*) No, in our opinion. The section seems to assume that where there is a hot water supply this will be connected to a fixed bath or shower and a wash-hand basin. Where an existing hot water supply is connected to a fixed bath or shower and a wash-hand basin, the application need not extend to providing a further hot water supply, but if a hot water supply is to be provided, then s. 4 (5) requires that it must be connected to the sink as part of the improvement.

(*d*) No, in our opinion. The application will not be a proper application which they are entitled to consider for approval.

7.—Husband and Wife—*Maintenance order—Wife returns subsequently to matrimonial home but denies that there has been any resumption of co-habitation—Husband asserts that there has—Enforcing the order.*

W for whom we act with her daughter aged 16 left her husband H on April 27, 1959, because of his conduct and went to reside temporarily with some friends. She thereupon issued a summons and brought the matter before the Domestic Court and on May 20, 1959, an order was made in favour of W on the ground of H's constructive desertion whereby he was ordered to pay W a weekly sum of £5. Some days later due to the fact that she was unable to continue to reside with friends, and because of the illness of her daughter W was obliged to return to reside in the matrimonial home with her daughter but did not resume co-habitation with H. Subsequently H consulted his solicitor and informed him that he and W had resumed cohabitation (which is denied strenuously by W) and he was advised to discontinue any further payments under the order. W was obliged to apply for a warrant for the arrest and bringing before the court of H for failing to comply with the order but the complaint and warrant was made and issued in the name of the collecting officer who is also the clerk to the justices. H's solicitor referring to *Stones Justices Manual* 1959, p. 1173 maintains that the order ceased to have effect on the date when H alleges co-habitation was resumed and no further steps are necessary by H in respect of the order. He refers to Note X, p. 1173 wherein it states the ceasing to have effect does not necessarily involve a judicial decision, the order has *ipso facto* ceased to operate (*Abercrombie* v. *Abercrombie* [1945] 2 All E.R. p. 467 para. E).

Upon referring to the relevant portion of this case we would agree that where there is no dispute as to the resumption of cohabitation then a judicial decision would not necessarily be required and the order has *ipso facto* ceased to operate, but in the present case the matter is controversial as W strenuously denies any resumption of cohabitation. In the circumstances we hold the view that the facts must be established by a matrimonial hearing before the justices particularly as in the present case the complaint was laid and a warrant issued in the name of the collecting officer and W therefore has no status in that hearing. Further as it is a matrimonial proceeding the evidence and arguments should be given before a Matrimonial Court. H's solicitor maintains that the question of arrears and current payments under the order cannot be proceeded with because of H's allegation of a resumption of cohabitation, but we are of the opinion that such a course would be a negation of justice, as, if this were the position, any husband on being brought before the court on warrant or summons for arrears under a maintenance order could say that the order had ceased because of a fictitious or otherwise allegation of resumption of cohabitation.

In circumstances such as the present case we hold the following opinion:

(*a*) As there is a dispute between W and H on the resumption of cohabitation that H should apply for and issue a summons before the Matrimonial Court for a discharge of the order on the grounds of a resumption of cohabitation so that the facts can be established by the justices and a decision reached.

(*b*) That H should be compelled to comply with the terms of the order in existence until a decision is reached and not be in a position to disobey the court order by with-holding all payments.

We should be obliged if you could consider this question and let us have your valued opinion thereon.

IPORAL.

Answer.

The husband cannot avoid all liability under the order merely by asserting that there has been a resumption of cohabitation. If he chooses to take out a summons to discharge the order he can do so but he cannot be compelled to. But in any event the court is entitled to entertain a complaint for enforcement of payments under the order unless satisfied that the order has ceased to exist, and therefore the question whether there has been a resumption of cohabitation is one which must be decided on the hearing of any such complaint. The fact that the wife is not the complainant in such proceedings is no reason why the court should not hear her as a witness in support of the clerk's complaint. Alternatively the clerk might feel, with this issue to be decided, that it would be better for the wife to proceed in her own name to enforce payments.

8.—Land Drainage—*Flood prevention—Powers of county council.*

1. The county council are concerned with flooding outside the jurisdiction of a catchment board, and where no internal drainage district has been created. In each case the remedy involves diverting existing watercourses and the question arises whether a county council has power under the Land Drainage Act, 1930, or otherwise to divert watercourses.

The following provisions of the Land Drainage Act, 1930, may be relevant:

(i) Section 50 which gives a county council the powers of a catchment board contained in s. 10 of the Act; and the powers of a drainage board contained in ss. 36 and 44.

(ii) Section 10 which provides that where land is injured or likely to be injured by flooding or inadequate drainage which might be remedied by the exercise of powers vested in an internal drainage board, and those powers are either not being exercised at all or not being exercised to the necessary extent, the county council may, subject to giving notice to the drainage board, exercise all or any of those powers including the power to defray expenses;

(iii) Section 34 which contains the general powers of a drainage board which includes the making of new watercourses;

(iv) Section 36 which gives the power to enforce obligations to keep watercourses in repair;

(v) Section 44 which contains powers as to obstructions;

(vi) Section 52 which gives power to a county council to make a scheme for the execution of drainage works in areas where the

circumstances cannot be met by the constitution of a drainage district.

The question arises here whether a drainage board must exist and be in default before these powers are exercised.

DELSO.

Answer.

Section 10 operates only where powers are vested in an internal drainage board and are not being used. We do not think that, as applied by s. 50, its operation is any wider. Sections 35, 36 and 44 as applied by s. 50 operate as original powers of the county council, where there is no drainage board. Section 34 is mentioned in the query, but is not applied by s. 50. It is however applied, in effect (although not expressly mentioned) by s. 52 (4). Section 52 confers original power on the county council, but subject to its own limit on expenditure.

9.—Licensing—*Licensing planning area—Provisional planning removal—Considerable alterations to plans.*

The provisional planning grant of a planning removal has been made by licensing justices following a proposal made by the licensing planning committee and confirmed by the Minister of Housing and Local Government.

The licensing justices were satisfied with the plans submitted for the proposed premises.

The applicants now desire to make considerable alterations to these plans, and I would appreciate your opinion on how to proceed. In *R.* v. *Woodbridge (Suffolk) JJ., ex parte Customs and Excise*, referred to in the 1959 edn. of *Paterson*, and also at 119 J.P.N. 755, it was held that where a provisional grant of licence had been made, under s. 10 of the Licensing Act, 1953, plans could not be altered on an application under s. 134 as there was no existing licence in force in respect of the premises, and the application should have been for a new provisional grant.

In applying that decision to the provisional grant of a planning removal, two differences emerge. The first is that in the case of a planning removal there is a licence in force, but not yet effectively removed to the proposed premises.

The second is that whereas a provisional grant of a licence is a direct and so to speak "originating" application to the licensing justices, a planning removal is an application based upon a proposal of the licensing planning committee, which has been confirmed by the Minister, and the licensing justices have already acted upon that proposal. Thus can they purport to act again?

O. ANDOR.

Answer.

We assume from our correspondent's question that the "considerable alterations" to the plans submitted are not such as occurred in *R.* v. *London County JJ.* (1890) 54 J.P. 213; *R.* v. *Pownall* (1890) 54 J.P. 438, and are not such that the licence holder might lawfully make them (if the premises were already on-licensed premises) without the consent of the licensing justices in that they fall outside the provisions of s. 134 (1) of the Licensing Act, 1953.

It seems, therefore, that as the power of licensing justices to declare the provisional grant final is based on their being satisfied that the premises have been completed in accordance with the plans submitted (*see* Licensing Act, 1953, s. 58 (5) (*a*), no power is given to allow "considerable alterations" which are a departure from those plans.

We can do no other than suggest that a second application should be made to the licensing justices for the provisional grant of a planning removal designed to supersede that which has already been granted.

We do not think that the situation disclosed distinguishes the provisional grant of a planning removal from the provisional grant of a new licence as in *R.* v. *Woodbridge (Suffolk) JJ., ex parte Customs and Excise* (1954–7) B.T.R. Law Reports, 40.

10.—Loan—*District council lending to another.*

Is it *ultra vires* for a county district council to lend money to another local authority?

CIRCO.

Answer.

Yes, in face of s. 188 for urban districts and s. 191 for rural districts.

11.—Loan—*Repayment of loan for fixed period.*

Where a local authority advertise for and borrow money from private lenders over periods of two to 10 years, is it possible to redeem such loans on giving notice notwithstanding the absence in the mortgage deed of a proviso for redemption?

DIRCO.

Answer.

Only with consent of the lender, who is entitled to receive the stipulated interest for the stipulated period.

12.—Local Government Act, 1948, s. 132—*Entertainment of conferences.*

The council, as the local authority of a holiday resort, have been encouraging national and regional bodies to make the town the venue for their annual conferences. This is a good advertisement for the resort. These conferences are given the usual facilities afforded in other towns; they are normally provided with a reception and dance or a concert and refreshments, etc., as well as the usual seaside facilities, such as the use of deck chairs and free use of bowling greens and tennis courts, etc. The council have been advised that (whilst the expenditure in entertaining these conferences is made with the object of advertising the district) they have only powers under the Health Resorts and Watering Places Act, 1936 (as amended), to incur expenditure advertising the resort outside of the district. Accordingly, the expenses of entertaining conferences are met from a fund set up by a committee known as the Conference Entertainment Committee, which, although under the patronage of the council, is not a committee of the council and represents various trading interests in the town. Its funds are raised by voluntary contributions, and by dances, etc., run by the committee.

My attention has been drawn to some paragraphs in a text-book in which the learned author suggests that s. 132 of the Local Government Act, 1948, provides powers for a local authority to contribute directly towards the expenses of a private entertainment. Do you consider that the council could legitimately contribute up to the limit permitted by that section towards the expenses of providing dances, concerts, and refreshments for the delegates and their families attending conferences, to the exclusion of other residents of the borough?

My own interpretation of s. 132 in the past has been that, by virtue of the wording of sub-para. (i) of the proviso to s. 132 (1), the entertainment provided or contributed to by the local authority must have some public element and be available to residents in the area of that authority.

A. IRISH.

Answer.

The proviso indicates that Parliament had in mind entertainments open to the public of the local authority's area, with or without payment: *cp.* subs. (2). We think therefore that the advice hitherto given was justified. Parliament has, however, not taken the precaution of restricting the powers in subs. (1), where the entertainment takes place within the area, and we doubt whether the High Court would import a restriction, if the expenditure described in the query were challenged.

13.—Nuisance—*Barking of dogs.*

The council have received a complaint from solicitors that one of their clients was complaining of a nuisance caused by the barking of dogs being kept and boarded at a house within a residential area. The solicitor suggested that the keeping and boarding of dogs within the curtilage of a dwellinghouse constituted a material change of use under the Town and Country Planning Act, 1947, and should therefore be the subject of an application for planning permission. It was found that five dogs and six puppies belonging to the owner of the dwellinghouse were being kept on the premises, and eleven other dogs were being boarded. On the garden wall of the premises was a notice board with the words "Boarding Kennels."

The county council as the planning authority felt bound by the Minister's decision in the *East Grinstead* case reported at p. 31 of the *Journal of Planning Law*, 1950, *viz.* that planning permission was not necessary because the use complained of did not constitute a material change of use.

The solicitors for the complainants have submitted that, if action under s. 23 of the Town and Country Planning Act, 1947, is not possible, then the council have a statutory duty to end the nuisance complained of under ss. 91 and 92 of the Public Health Act, 1936. I have replied to the effect that the sections referred to have no application to the creation of a nuisance by noise from animals, and that the only remedy available to the petitioners is by an action in the courts for an injunction and/or for damages.

Will you please confirm or otherwise that I am correct in my interpretation of the sections of the Public Health Act, 1936, referred to and give me your opinion generally.

BANIG.

Answer.

The Minister's decision cited in the query emphasized that it was upon the facts, and might be different upon other facts.

(There were said to be four dogs in the family, and six boarded dogs.) Accepting the county council's view that the present case is not upon facts distinguishable from the precedent, we agree with the answer you have given to the complainant: *see Galer v. Morrissey* (1955) 119 J.P. 165; [1955] 1 All E.R. 380.

14.—Public Health Act, 1936—*Building byelaws—Space at rear of buildings.*

A question has arisen as to the interpretation of byelaw 69 (Ministry model) which deals with the space at the rear of buildings. The point is what is meant by "building intended to be used . . . *predominantly* for human habitation." Plans have been submitted for a block of buildings consisting of four houses and shops. The block has been specially designed to fit a corner site. The plan shows that approximately one-third of the aggregate floor area of each house and shop will be used for business purposes and two-thirds residential purposes. It seems clear that two of the four buildings have not the necessary 300 *square ft.* of open space exclusively belonging to the premises, as required by the byelaw. It has been suggested that, since the proposed buildings are primarily intended to serve the needs of the locality as retail shops, the residential portion, though larger in terms of accommodation than the business part of the buildings, is ancillary to the main purpose, and accordingly the predominant use is that of retail shops, and therefore outside the scope of byelaw 69. I have been unable to find any cases on the point or any other clear guidance. May I have your opinion, whether you consider that these premises come within the provisions of the above-mentioned byelaw. Model byelaws 70 and 71 are not applicable.

DARAMO.

Answer.

Predominance is a question of fact, which must in our opinion be answered separately for each building. Even if the predominant use of this block is commercial, in the sense that its commercial use caused it to be placed where it is, we think that a component building of which two-thirds will be residential is intended to be used predominantly for human habitation.

15.—Road Traffic Acts—*Driving examiner suggesting to examinee under test that he should disobey traffic sign—Aiding and abetting.*

The Motor Vehicles (Driving Licences) Regulations, 1950, reg. 16 (3) (which covers the grant of a provisional licence) reads as follows:

"3. A provisional licence shall be granted only subject to the condition that until the holder thereof has passed the appropriate test:

(*a*) he shall, except in the case of a vehicle (other than a motor car) which is not constructed or adapted to carry more than one person, *or when he is undergoing a test,* use it only when under the supervision of a person who is present in the vehicle with him. . ."

1. Do you agree that in the case of a provisional driving licence holder undergoing the driving test, the driving examiner can lawfully instruct the examinee to (*e.g.*) drive the wrong way down a "one-way" street or even to drive straight over the traffic lights when they are at red, etc., with the object of finding out whether the examinee will conform with signs and signals lawfully placed on the road, or not?

The reason for this query is that the transport driving examiner is not classed as a supervisor of the person driving and cannot, therefore, in my opinion, aid and abet offences committed by the learner driver in such circumstances.

2. Further to this, do you also agree that it would make no difference to the position whether (*a*) the supervisor *instructed* the licence holder (provisional) to contravene the law in this way, or (*b*) the learner driver committed such an offence of his own accord, without being so instructed by the examiner, but with his knowledge that such an offence is about to be or has been committed.

Your views on this matter, together with any relevant Case Law, would be greatly appreciated.

MAXOR.

Answer.

1. We do not agree that the examiner can lawfully instruct the examinee to disobey a traffic sign. We consider that if the examiner did so and an offence resulted he would have been guilty of counselling and procuring the commission of the offence. His method of testing whether the examinee will obey a traffic sign is to instruct him to drive to a place where there is such a sign and then to see whether the examinee conforms to the indication given by the sign.

2. We do not think, if the examinee commits such an offence of his own volition, that the examiner commits any offence although we consider that a wise examiner would always in the interest of safety, try to prevent the offence being committed if he became aware in time of the examinee's intention.

16.—Road Traffic Acts—*Motor cycle—Pillion passenger astride—No proper seat and no footrests—Passenger side-saddle in similar conditions.*

Having in mind s. 16, Road Traffic Act, 1930 (restriction on pillion riding) and reg. 101, Motor Vehicles (Construction and Use) Regulations, 1955 (passengers on motor bicycles), I would be obliged for your valued opinion in the following circumstances, the main issue being whether one or two offences are committed by the rider.

(i) A is riding a solo motor cycle and carrying a pillion passenger sitting astride on the rear mudguard. There are no footrests or pillion seat fitted to the motor cycle.

(ii) B is riding a solo motor cycle and carrying a pillion passenger who is sitting side-saddle on the rear mudguard. There is no pillion seat or footrest fitted to the cycle.

It is argued by one of my superiors that reg. 101, Motor Vehicles (Construction and Use) Regulations, 1955, is only concerned with pillion passengers who are sitting astride on a proper pillion seat when no footrests are fitted. He holds the opinion that the regulation, in referring to a pillion passenger sitting astride a motor cycle, can only recognize what is lawful by the main Act, namely, a pillion passenger sitting astride on a proper pillion seat; therefore only one offence by the rider is committed and this against the main Act.

I hold the view that in (i) above A commits an offence against s. 16, Road Traffic Act, 1930, and also an offence against reg. 101, Motor Vehicles (Construction and Use) Regulations, 1955.

In (ii) above I consider that the only offence committed by the rider is against the main Act, s. 16.

MIRKIL.

Answer.

1. In our opinion A does commit two offences as suggested by our correspondent. It would be for a court to decide whether separate penalties should be imposed.

2. In our opinion B commits only one offence, that against s. 16, because by the wording of reg. 101, that offence can be committed only when the passenger is carried astride the motor-cycle.

17.—Tort—*Measure of damages—Set off for money saved.*

A is an agricultural merchant. One of his vehicles was damaged recently as the result of the negligence of B, and he lost the use of the vehicle for a period of one month. A had to employ haulage contractors to carry feeding stuffs from the warehouse to his own depot, and paid the sum of £400 for these services. A has claimed the sum of £400 in full from B's insurers. However, B's insurers maintain that a sum should be deducted from the £400 equivalent to the cost of the fuel which he would have used in his own vehicle if it had been operating; also a sum to represent the saving in wear and tear on tyres, etc. In the alternative, the insurers maintain that the agricultural merchant passes on to his customers the cost of haulage of feeding stuffs, and therefore this percentage should be deducted from each load carried by the hired lorry, and is represented by the account for £400. A's solicitors maintain that A has paid for the fuel used by the hired lorry—the haulage contractors were operating the lorry in the haulage contractors' account of £400. Can you advise whether A is entitled to full re-imbursement of the £400 paid to the haulage contractors for their services, and, if not, what deductions can be made by the insurers?

DOLYON.

Answer.

The alternative suggestion of the insurance company seems childish. A merchant must fix his selling prices on the basis of costs over a relatively long period, in competition with other merchants. In our opinion, however, the insurance company are right in saying that there should be a set-off against A's claim, corresponding to what he has saved through not using his own vehicle. Apart from cases where exemplary damages can be claimed, the plaintiff's right is to be put as nearly as possible in the same position as if the accident had not happened.